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What the Presidential Campaign Means to the Utility Industry

Will the "Power Trust" be groomed by the liberal-radical group as a political issue? Or will the conservative counsels prevail and the campaign be conducted on broad economic lines?

BY FRANK R. KENT

THERE is sound ground for believing that before this campaign is over Prohibition, which has so muddied the waters for twelve years that no other issue could be got clearly before the people, will sink into a subordinate place. The real fight will be on economic lines, and the cloudy mouthings about the extreme wetness of one party and the alleged straddle of the other will diminish as the fight proceeds. Actually there is little practical difference between the two on liquor. National Prohibition has been scrapped; the Prohibitionists have been thrown out of both parties, driven into one of their own, where they should be. About the only conspicuous politician left with them is the stranded Borah, who totally misguessed the situation and is now squirming to find some solid ground to prevent himself from being shoved into the class of forgotten statesmen.

IN effect, both parties are wet. The difference on this is largely a matter of language, not of fact. Before the end this will be recognized, and economic issues overshadow everything else, which is as it should be.

Nearly every clear-headed man agrees about that. Hence, the real interest is in the economic slant of the parties and the candidates. Clearly, the lines are drawn. In this campaign more sharply than in any since the Bryan days, the division is between conservatives or reactionaries on the one side and liberals, progressives, or radicals on the other, according to what terms are preferred. And that makes it an almost completely sectional campaign as well, because in this country the industrial East is as strongly conservative as the agricultural West and South are radical. Distinctly, the Republicans in this fight are the conservative party, the Democrats the radical. If the election were a matter of territory and states, the Democrats should easily win. But it isn't. The election is a matter of electoral votes and the bulk of these, as well as the bulk of the population and wealth, are in the East, which, on the surface, would seem to give the Republicans the better chance. In brief, the Solid South, plus every possible Western state, will not be enough to elect the Roosevelt-Garner ticket. They must have the vote of at least one great Eastern state to win. Any analysis of the electoral vote will demonstrate the mathematical accuracy of this statement. It is equally true that the Republicans cannot be successful unless they hold the New York group of states, plus the normally heavy Republican strongholds in the West. What it comes down to is that the New York group — which includes the states of New Jersey, Connecticut, Massachusetts, and Rhode Island— with ninety-three electoral votes—is indispensable.

THAT being the practical political picture, the reasons the conservative interests incline toward Hoover, the radicals to Roosevelt, are important. In the first place it is not a matter of platforms or principles. There is no space here to analyze the first, nor show the complete absence of the second. It is enough to say that there is in neither platform any really radical plank—nothing that could justify goose flesh in any public utility, bank, corporation, or business concern. It is true the Democratic proclamation has a more radical sound, but that is because of its better literary style, its unparalleled brevity, and its references to utilities, holding companies, and stock exchanges. But, when these are scanned, they are more or less trite, vague, and meaningless. The truth is that nothing outside of the liquor planks in either platform has teeth. Those cancel each other and the rest will never sink into the so-called public mind or figure in the fight, except incidentally. Nor is the real reason for the radical flavor of the Democratic party its presidential candidate. Governor Roosevelt is not a radical—at least not much of one. He calls himself a "Progressive Democrat," he talks about the "forgotten man," and, in an unwise and inaccurate speech last spring, he assailed the Reconstruction Finance Corporation for helping the great banks in New York and ignoring the small ones outside. But, in his two terms as governor, he has taken no radical step, proposed no radical plan, advanced no radical idea. It is the evangelical tinge of his language rather than any concrete fact that gives him his Progressive reputation, and that would not be enough to

make the cleavage. The real reason is the character of his preconvention campaign, the personnel of his chief political advisers and supporters, the influences that brought about his nomination, and the endorsements he has since received. Regardless of the diluted nature of his personal progressivism and the feebleness of his impulses in the radical direction, these have stamped him and his party as clearly Progressive. And they have turned the conservatives—particularly the corporate interests—toward Hoover, great as is the distaste of many of them for him. There is no other way to look at it. The Roosevelt campaign made the cleavage inevitable. Take its story from the start. It began a year ago last March, when he was the only conspicuous Democrat invited to attend the Progressive conference, engineered by "Little Bob" La Follette, and in which Norris and Borah were the particular stars. He did not go but sent a long, warm, sympathetic, and entirely platitudinous telegram. About the first Senator to come out for him was Burton K. Wheeler, of Montana, who, in 1924, was the vice presidential candidate with the late Senator La Follette on his third party ticket. Denouncing all other Democratic availables as reactionary and subservient to the "Interests," Senator Wheeler declared if Roosevelt were not nominated there would be another third party.

IN the meantime, through the slickness of the suave Mr. Farley, his field general, and the asset which the Raskob-Smith hostility proved, practically the whole South and West was lined up for the Roosevelt nomination long before the convention. He had practically no opposition there. It was the East that concentrated against him, held out to the last, never did acquiesce. Soon, the Progressive Senators began to refer publicly to Roosevelt as "one of us." Dill of Washington, Costigan of Colorado, Huston Thompson, who was one of the most pronounced Progressives in the Wilson régime, Representative Howard of Nebraska, who at the last session introduced the old Bryan 16 to 1 free silver bill, and others followed Wheeler into the inner Roosevelt circle of preconvention management. One of the last to come was the blatant Huey Long of Louisiana, whose senatorial speeches are based upon the noble idea of taking their money away from the rich and distributing it around so that everybody shall have some. It was this group, leading South and West, that dominated the Roosevelt convention strate-

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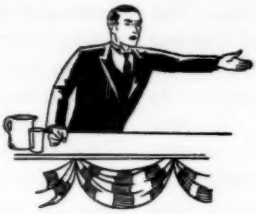
gy and made his convention fight. That fight, however, would not have been successful but for the deal that swung the McAdoo-Hearst influence to him on the fourth ballot and made Garner of Texas his running mate. That really branded the ticket. The mere names of McAdoo and Hearst have a distinctly sinister sound in the conservative East, whereas the Garner selection, with the Democratic House record, for which he was largely responsible, fresh in mind, was the last one to appeal to the conservative East. It included emasculation of the sales tax, scuttling of the economy program, passage of the bonus, and of what was generally denounced as the "greatest pork barrel bill in history."

Then, following the convention, Senator Norris of Nebraska, the leading advocate of national ownership in the country and the chief antagonist of the so-called "Power Trust," bolted Mr. Hoover and publicly gave the Roosevelt ticket his blessing. Hiram Johnson of California jumped all but the last rail of his party fence and so, too, did that great economist, Brookhart, of Iowa. This about made the line-up complete. If there is a conspicuous Progressive, liberal, or radical in either party not on the Roosevelt side and against Hoover, his name cannot now be recalled. Even those who were dry did not let that stop them. The only exception is the unfortunate Borah, who can't find in the country either a party or a candidate to suit him and mopes dolorously alone.

WHEN you consider these facts—and they are facts—it is inevitable that the division should be between conservative and radical, despite the singular fact that the presidential candidate of the radical element lives in New York, is not really radical himself, and is not running on a radical platform. It is the personalities tied up with him, not the principles for which he stands, that give his party its color this year. It differs amazingly from the Bryan campaigns both as to candidates and concrete proposals, but not since Bryan has there been such a clear-cut division along economic lines. After all, this is the natural division—between conservatives and liberals. The words Republican and Democratic no longer mean anything. Each party had in its ranks wholly incongruous and antagonistic elements. The Democratic is naturally the Progressive party, largely because it is the minority party, but in the last three campaigns its candidates have had no Progressive tinge. This time it is different. It is an interesting situation because the business interests, now inclined toward Hoover, had—and have—no real liking for him. They were mostly "set" to go Democratic this time, would instantly have swung in behind Young, Ritchie, or Baker—almost anyone save Roosevelt. And it isn't he they fear—it's the crowd behind him. With liquor out of the campaign it gives us a fine chance to discover whether the country is really radical or conservative. The Democratic hopes are founded chiefly upon the belief that they can capitalize the unrest and distress bred from the depression. They believe the people want a change and that the resentment against Hoover is so great the Roose-



The "Power Trust" as a Political Issue

"THE extreme radicals in the Roosevelt camp will assail Mr. Hoover as the tool of the 'Power Trust' and the vassal of the corporate interests. Just before Congress adjourned Senator Norris sounded this note on the floor of the Senate, and it will be echoed in other places."

velt promise of a "new deal" will sweep him in, though the deal is to be made with the same cards. The sins of omission and commission of the Hoover administration have been so many and grievous that the indictment is complete and the verdict sure.

ON the other side, the Republicans believe that the tendency in times of depression is conservative rather than radical. Conceding the deep unpopularity of Hoover and the existence of 8,000,000 unemployed, they argue that there are still some 30,000,000 who are employed. The basic desire of both is for economic stability and security rather than adventure. The employed are primarily interested in holding the jobs they have, the unemployed in getting back those they have lost. They think there is a sympathy in the country for Hoover that has been underestimated and that a great many people believe he has borne a great burden in a fine way. And in particular, they say, he is "safe." The current of alarm, they contend, will run stronger than the river of resentment, and the Democratic picture is calculated to frighten everybody with more than $15 into voting the Republican ticket.

THERE are the two cases. No one can do more than guess, at this time, how they will work out, but certainly the line-up is far more natural and logical than we have had in a long time. What apparently will happen in the campaign is that the extreme radicals in the Roosevelt camp will assail Mr. Hoover as the tool of the "Power Trust" and the vassal of the corporate interests. Just before Congress adjourned Senator Norris sounded this note on the floor of the Senate and it will be echoed in other places. Among other things, Mr. Norris charged that Julius Nutt, Treasurer of the Republican National Committee, is himself part of the "Power Trust," a factor in a syndicate that has been buying up

public utility properties in the West.

"Now," says Senator Norris, "his next job is to reëlect Herbert Hoover as President of the United States."

This sort of attack will supplement the speeches of Speaker John N. Garner, Democratic vice presidential candidate. Mr. Garner has already indicated his purpose to take a more than usually active part in the fight. Before Congress adjourned he had, in a series of statements, assailed Mr. Hoover for his failure to do anything to relieve distress among the unemployed, and severely criticized him for devoting all his thought and energy to buttressing the big banks and corporations. Probably the most extreme effort of Mr. Garner during the session was his vehement insistence upon publicity for every act of the Reconstruction Finance Commission, which insistence delayed for days the passage of the relief bill, continued Congress in session an unnecessary week, and greatly added to the trouble in handling the bonus army, which was besieging the doors of the Capitol. The interesting thing about the Garner fight for publicity was that his most bitter opponents were Democratic leaders in the Senate. These Democratic Senators did not want to be put in the position of slapping their own candidate for vice president in the face. Yet it was common knowledge that on both of the Garner assaults in those final days of the session—one to compel the Reconstruction Finance Corporation to lend money to individuals, and the other to compel complete publicity for every loan—there was general Democratic disagreement with him not only in the Senate but among conspicuous Democrats outside. Most of them did not hesitate to privately express their conviction that Mr. Garner is a liability, not an asset, to the Democratic ticket, and that the more quickly he is submerged, the better the Roosevelt chances. He not only alarms the business interests, alienates those who believe that the essence of national prosperity is in a balanced budget, but the more prominent he is allowed to become, the more conspicuously protrude the horrid personalities of McAdoo and Hearst, who are directly responsible for his nomination, and whose dominance in a national administration seems a dreadful thing to the average Eastern business man. The trouble appears to be that Mr. Garner rather enjoys bathing in the publicity, good and bad, that flows from his violent attacks upon Hoover, and is somewhat disposed to consider that the fight is really between Hoover and Garner rather than Hoover and Roosevelt. Altogether, Mr. Garner promises to be somewhat of a problem to the Roosevelt management, which is sufficiently astute to know that the election cannot be won by the South and West alone and, while anxious to hold Progressive support, is equally concerned in not alienating the conservative interests upon which New York hinges.

At the time this is written, the degree to which the business and financial interests ultimately will get behind the Hoover ticket is uncertain. If, because of McAdoo, Hearst, Norris, Wheeler, Garner, Long—and for other reasons, chief among them the utterly indefensible Democratic House record, they eventually flop to

the Republican side with customary solidity, Mr. Hoover should be elected. In the course of a good many years of political observation, I have known of no national election where there was any real voting gap between the so-called business interests and the so-called masses of the people. There is, to be sure, a sectional gap, and there is a religious and a racial gap, but not an economic one. Take an election such as this promises to be, in which there is neither religious, racial, nor moral issue, and I believe the sectional division is the real division. Between the Big Business man and the small business man, between the small business man and the clerk, between the clerk and the laborer, there is no real political difference. They think, feel, and react pretty much in the same way. The majority of them all are still bound by the party label and swayed by the fetish of party regularity, but the reactions of those who cast these labels aside are not materially different. At least they have not been in the past and there appears no reason to think they will be this time. However, there is at this moment no certainty that there will be any such solidarity of business behind Mr. Hoover. As I have said, the inclination is toward him. The Roosevelt-Garner ticket and the influences behind it are an extremely unpalatable dose for business men. Nevertheless, there is a disposition to hold off from too deep commitment on the other side until the campaign has developed and a better measure of Roosevelt is obtained from his campaign speeches.

Immediately after the Democratic convention in Chicago, there was, it is true, a more or less violent business reaction against the Democrats and a general industrial and financial disposition to say that a trained Hoover, in a second term in which he would not have to think of politics, would be infinitely preferable to a first term Franklin Roosevelt, with a possible McAdoo in his cabinet. However, within a week or two, the word went around New York and Chicago that it was too early to solidify, that the thing to do was to wait developments, see what Roosevelt has to say. To a considerable extent, I think, this hold-off policy among the bigger business men is traceable to Mr. Owen D. Young, who, as a regular Democrat, will publicly support the Roosevelt ticket, but whose private feelings about it will have great weight in business circles.

The sum of all this is that, as yet, there are some pivotal and important financial interests in the East, which, while inclined toward Hoover because of the radicals behind Roosevelt, have so deep a distaste for the former that they are not yet committed, and have a hope that the Democratic candidate will make it possible for them to be with him.

A New and Revolutionary Principle of Commission Regulation

An interpretation of the recent temporary order issued by the Wisconsin commission in the most famous "telephone rate case" will appear in the coming issue of this magazine—written by a nationally known authority, WILLIAM A. PRENDERGAST, *formerly chairman of the New York Public Service Commission.*

Street Car Fares as Yardsticks of Regulation

In the attacks on regulation, why do the critics of the state commissions ignore street car rates which have climbed steadily upward, and focus attention upon electric light and power rates which have climbed steadily downward? Here is one answer —submitted by a student of regulation who is in the street railway industry.

By RAYMOND S. TOMPKINS

Lost and bewildered amongst the criss-crossing and zig-zagging theories about the rights and wrongs of utility regulation, some observers have lately found the following idea beckoning them, like an exit light a long way off:

That the gentlemen who live and thrive by promoting the theory that public utility regulation has broken down will finally quit and go back to hard work when street car companies begin to parade before state commissions begging to be permitted to reduce car fares.

Perhaps (so this idea goes), they need not go back to very hard work, for something is always "breaking down" somewhere under a form of government like ours, and the Repair Gangs of Politics, so long as they have the necessary energy, can keep dashing around the country like volunteer firemen, finding plenty of roofs to chop holes in, and some applause. But the idea is that they will begin to regard the ultimate and complete collapse of state utility regulation as indefinitely postponed when the wicked tractions cease from troubling and the weary car-fare boosters are at rest.

Upon examination there seems to be sound ground for this novel and (to some) outlandish idea. In how many states is the system of utility regulation attacked because of increases in the ratepayer's bill for electric current and gas? The answer is, of course, in very few. Yet the visiting firemen who roar for higher

pressure on the streams of regulation attribute the "destruction of the people's rights" to outlaw light and power companies and seldom to the weary street car companies, although the public's bill for light and power has gone steadily downward while its bill for local transportation has gone steadily upward.

Of course, it has made no difference to the Knights of Public Ownership whether street car fares in different localities are five cents, seven cents, or ten cents. Their picture of the weakness of public control is painted on a broad canvas stretched from coast to coast; their jousting fields are nation-wide, their Power Orgoglio is not clutching at small towns and cities but at the whole country. They will hoot at the idea that a return to cheaper street car rides will quiet the tumult; and they ought to know a good deal about that because they are the boys who make the tumult. But the point is that this particular tumult has been making very little difference to any great numbers of plain people; that all the noise about power's ravishment of the public purse through extortionate light and power rates has sounded empty and hollow because nobody is conscious of any such ravishment.

But a great many people are extremely conscious of the increase in the rates of transportation utilities. Scarcely a city in the United States big enough to have street cars or busses or both has failed in these post-war years to go through one or two, or even three or four street car fare increases cases; and in virtually every one of them the car fare has actually been increased. Here and there fares have fluctuated first up, and then down a little, then up again more than before, usually. The whole trend of these fluctuations has been upward.

In virtually every case the street car company has had to apply to the public service commission of its home state for its increase in fares; and the commission has had no alternative but to grant the increase. Every such ordeal has had a thorough airing in the newspapers of the stricken city. The big black type recently almost exclusively devoted to the mutual murdering of Chinese and Japanese in Shanghai, has almost been worn out announcing that one-half cent or one cent or perhaps a little more might be tacked onto the car fare; and with a much keener local appreciation of the editor's news sense. When the regulatory tribunal unlucky enough to have this baby laid on its doorstep actually succumbed to the inevitable and took it in, the outbursts in the public press have shaken the citadels. "They Broke the Faith"; "They Have Sold Out the People"; "Traction Whip Cracks; P. S. C. Dances," such editorial thunderbolts have flashed and rumbled again and again. The increase might be granted grudgingly; or while granting it with one hand the commission may have taken it all away with the other by extending single-fare zones or reducing school children's fares. It made no difference; the cries of anguish were abated not a whit, the commission was no less regarded as "a tool of the traction interests."

Perhaps a month later the local light and power company would come before the commission with a sugges-

tion for a rate reduction—or it might even be hauled before that tribunal and required to show why it shouldn't reduce rates—and a reduction might follow. Not even this would restore the commission to local public favor. "Regulation A Farce, Says Ossip O'Brien"; "P. S. C. Control A Dead Letter." And always this: "They do whatever the street car company wants."

PUBLIC utility commissioners everywhere are familiar with this curious phenomenon. It has appeared in city after city. If there is any real public distrust of commission regulation apart from the front page messiahs it is due to the car fare increase habit and not to any higher cost of gas and electricity. Yet the visiting firemen cry out against the light and power companies who have not the rate increase habit but the rate decrease habit.

Here is a strange and interesting condition, commonplace throughout the land, yet seldom noticed. Here we surprise the national antiregulation crusader, the defender of the people against the perfidy of public control, in the throes of a wrestling match with his own private problem. His job is the job of a showman; he must get the crowds inside the big tent. He has a choice of two programs. For his first choice he can invoke the most recent street car fare boost. Here clearly are higher rates, proof (as he sees it) that a supine commission has sold the people out. But that would be purely local. If the fare has just been hiked in St. Louis no St. Louisan is going to get any madder because another commission has also hiked the fare in Cincinnati. In fact he had rather not hear about the fare boost in Cincinnati because it somehow seems to back up and justify the fare boost in St. Louis and thus dampens his anger. For the same reason the big national crusader had rather not talk about it. And to take all the car-fare boosts all over the country and make of them a shameful parade to the dishonor of state regulation is to strike somehow, even to the fervid crusader, a false note in his own program—to indicate a necessitous condition in a necessary industry rather than a bad state of affairs in public control.

So the crusader, rather than run the risk of advertising free of charge the problems of the local transit business turns to his second choice—a denunciation of the light and power interests.

Here, unfortunately, are lower rates, and he runs the risk of advertising the fact that this is the rate-*reducing* branch of public utility service, but as a student of human nature he knows that man forgets benefits and blessings more quickly than he forgets wounds. And so he selects

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his theme. If, as the astute Alfred E. Smith has said, it turns out that "this was the one thing that I could not arouse the people over," nevertheless the crusader keeps on hammering. Perhaps somewhere, some time, the shell of public indifference will crack. Or perhaps the gentleman is merely in love with the sound of his own voice.

BUT we also have the possibility that even the home-town squabbles between commissions and public over car fares—local stuff entirely, nobody else's business, and strangely unavailable for national ammunition, will cease. For they certainly will cease in every locality where car fares begin to go down instead of up.

How imminent is that glad day? Certainly it is getting closer all the time. Car fares are close to the economic limit. From that point the drop is bound to begin, there will be no place to go but down. Today, fourteen years after the final year of the World War, when we saw the beginning of the end of 5-cent fares (except where retained at the expense of the general taxpayer for political purposes, as in New York), it seems pretty clear that street car cash fare rates can go as high as 10 cents without being more than the traffic will bear. Each year more cities move into the higher fare brackets; where no more than 58 cities had 10-cent fares in 1920, there were 232 of them with populations of more than 25,000 in 1927, and today there are many more. The average street car fare for the whole country in 1913 was 4.84 cents. Today it is nearly twice that much.

REGULATION, despite the slings and arrows hurled at it all this time, has kept street car fares from going up even more sharply, for the rise in street railway operating expenses which are not publicly regulated—cost of materials, wages, electric railway construction costs, and general construction costs—started long before the rise in fare and has far outstripped it. The charge for furnishing the service has lagged far behind the cost of furnishing it; and the rise in the use of individual transportation by automobile has steadily pushed farther away the transit companies' ability to build up new business on any settled fare level.

To this condition we should soon see applied the curative properties of (a), improvement in business generally bringing more riding of every sort; (b), less unemployment, with more workers riding the cars; (c), more street railways approaching the 10-cent fare with improved credit and consequent ability to improve service; (d), a modern standard street car representing years of painstaking research and experiment; (e), practical conclusions about modern economic fare structures finally reached by the industry's fare structures' committee, and probably affected by the new competitive nature of transit business, and (f), adjustment downward of ancient franchise and paving tax burdens created in the halcyon horse-car days of "Passenger Railway Insanity." And so to the happy time when fares begin to descend.

IN the meantime, clamors continue here and there for immediate fare reductions without regard to economic

A State Court Overrules the State Commission's Order to Increase Car Fares

"By January 12, 1932, we find the supreme court of Wisconsin setting aside the commission's order of May, 1930, 'increasing street car fares' (to quote the court's memorandum), on the ground that the company's earnings under the 1930 rates were approximately $400,000 below a reasonable rate of return. Thus the 1930 rates are to go, and the old rates . . . are to return; the court adding that the old rates could stand or 'the commission could try over again.'"

revivals and, in some localities, particularly where transit is backed by power and light resources, experiments in reduction are actually tried out to the delight of the people, and the vast relief of the commissions, but usually to the financial embarrassment of the experimenting street car companies. This is because one or more of the curative factors listed above is missing and the time is not ripe for the reduction. For to expect modern local transportation to thrive and improve on fare reductions alone is like expecting a thin man to get fat on an exclusive diet of lettuce salad.

THE most notable recent fare experiment in the United States was undertaken by the Milwaukee Electric Railway and Light Company. It was not simply a fare reduction, for it was based on the premise that "existing fares were inadequate" and that the street car branch of the company's business was having to be supported by the light and power branch. It was an experiment in what modern transit men call "merchandising," which means to go after new street car riders like a Fuller brush salesman making the town whisk-broom conscious. Naturally, since new business cannot be created by the simple expedient of raising prices, something else had to be done besides making the "inadequate" fares "adequate." So, while fares were raised from 7 cents cash, or eight tickets for 50 cents, to 10 cents cash, six tickets for 50 cents, there was also introduced at the same time a "weekly pass," costing a dollar and entitling the holder (meaning anybody who wanted to use it) to ride as often as he liked all week long. This was a real fare reduction, but only if you rode the street cars a lot, because if you only rode twice a day on weekdays (twelve rides a week), it would cost you $1, anyway (at six tickets for 50 cents), but if you paid a dollar for a pass you not only had the twelve rides you *needed,* all paid for in advance, but

as many additional rides as you *wanted* without a cent's additional cost. Of course, if you didn't *want* any more than twelve rides a week you probably wouldn't buy the pass. But if any great number of 30-cents-a-week riders, or 60-cents-a-week riders, or nonriders, should regard this as such a bargain that they should decide to become dollar-a-week riders, then presumably both the public and the company would find the experiment profitable.

THIS whole new plan, presented in January, 1929, but not approved by the Wisconsin Public Service Commission until May, 1930, was authorized in ample time to help the Milwaukee street railway company present the most astonishing electric street railway performance in the country for that year. It won the Charles A. Coffin Medal for 1930. In a street car world where everybody seemed down to his last crust, where every company's 1930 figures showed fewer passengers and less income than for 1929, where the contestants for the highly prized Coffin Award proudly proved "courage in adversity," "progress against heavy odds," and equally praiseworthy matters, the Milwaukee company alone was able to meet the contest requirement, "More Riders, More Revenue," and came trolleying home with the bacon. In the face of the depression, with banks and industries crashing right and left, this scion of a battered but noble industry had actually during that dark year served more customers, made more money.

But after a glorious 1930, there were even darker days and by January 12, 1932, we find the supreme court of Wisconsin setting aside the commission's order of May, 1930, "increasing street car fares" (to quote the court's memorandum), on the ground that the company's earnings under the 1930 rates were approximately $400,000 below a reasonable rate of return. Thus the 1930 rates (10 cents cash, six tickets for 50 cents, and $1 weekly pass) are to go, and the old rates, 7 cents cash, eight for 50 cents, are to return; the court adding, that the old rates could stand or "the commission could try over again," while the company announced, "We have no desire to take advantage of the decision during this trying period of depression. Our passengers may be assured that we have no intention of now beginning action for higher fares."

Thus everybody gets his fare reduced except the former weekly pass buyer who may have taken as many as 25 rides a week on his pass, thus getting his fare down to 4 cents. At least this seems to be the situation unless the Wisconsin commission "tries over again."

OF course, it is not the commission that is "trying," it is the company; and the thing it is trying is the thing it thinks will attract customers and make more money. Mr. David E. Lilienthal expressed for the commission that tribunal's position very neatly when he said (*Re* Milwaukee Electric R. & Light Co. P.U.R.1931E, 289, 290):

> "If a Wisconsin public utility is unable to maintain its credit, or if it sickens and dies, this commission . . . cannot disclaim all responsibility for the event . . . We do deem it our duty to encourage . . . competent and public-spirited management in its efforts to extend and im-

prove service . . . and thereby to maintain or improve its earnings and credit position."

All the Wisconsin commission has done has been to investigate, sanction, and pray for the success of the company's efforts to build business by experiments with fares that did not all seem (in the public mind) to favor the company alone. This may, to be sure, involve really doing the company a favor without seeming to, and if it turns out not to have been a real favor at all, but actually the reverse, the Commission whose duty it is to "encourage public-spirited management," can do nothing but view the ensuing action of the law courts as complacently as possible and help the company to "try again."

Here was a delicate problem in public service commission public relations, and the Wisconsin commission handled it creditably. For a utility can strongly affect its commission's public relations and any commission is fortunate if its little "wards" are of the sort who can experiment to maintain their efficiency and credit by giving the public a break on rates. Certainly the light and power "wards" of regulation are of that sort—they have been reducing rates steadily. Yet, you say, that doesn't seem to have helped the public relations of public service commissions generally. But it has helped them because it has made the roars of the High Priests of Public Ownership sound hollow and vain. Still there remain the agencies of local transportation, now carrying only those who have to ride street cars, burdened with old debts and old taxes, staggering along under loads that would have crushed most businesses long ago, so necessary to public convenience that if they "sicken or die," a commission "cannot disclaim all responsibility for the event." And still having to come around to get the street car fare boosted!

THESE are the gentry who have really made public service commissioners something less than heroes in their own home towns. These are the boys who some day, when business comes back, will find themselves able to start cutting rates instead of boosting them. They will find the doors of the state commissions wide open to them with plenty of "encouragement for public-spirited management," and the word "welcome" in large letters on the mat. Their proposals to reduce car fares will receive earnest and sincere, not to say goggle-eyed attention, and due consideration will be given to the commission's responsibility for the effect of the lower rates on the company's credit and earnings, not wasting too much time on this lest the company change its mind. It will appear that the public interest requires the prompt adoption of the idea and it will be forthwith authorized and approved. Thereafter the name "regulation" will be adorned with wreaths of immortelles; public monuments to beloved commissioners will be unveiled with band music in every village square, and the holy men of Government Ownership, with pants patched and rags fluttering in the breeze, will be forced to the pathetic expedient of declaiming their speeches into empty wells.

That, at least, is the prophecy.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

MORRIS LLEWELLYN COOKE
Engineer.

"I am convinced that it would be a mistake to plan now for widespread public ownership in this country."

JOHN M. FITZGERALD
Railroad executive.

"Public employment, if carried far enough, can lead to the extinction of private enterprise."

PAUL BLANSHARD
Special lecturer for the League of Industrial Democracy.

"Seventy-five per cent of the younger professors of the social sciences are Socialists at heart, but lack the fortitude to say so openly."

CALVIN COOLIDGE
Former President of the U. S.

"There can be at this time no greater public service than leadership in arousing public opinion in favor of constructive economy in government."

EDMUND E. LINCOLN
Former professor of economics at Harvard.

"Our economically monstrous and wasteful competitive railroad system must be readjusted or public ownership in the not far distant future will be inevitable."

EMILE GAUVREAU
Newspaper columnist.

"When the government handed the (rail) roads back to the companies after the war, equipment was in a good state of efficiency."

ARTHUR HUNTINGTON
Engineer.

"The politician, who has contributed little to the present condition and is likely to contribute even less to its solution, is as never before creating the machinery of governmental meddling."

H. I. PHILLIPS
Newspaper columnist.

"The A. T. & T. earned only $4.02 a share in the last six months. When the company asks central for Miss Prosperity it presumably gets the answer, 'That phone has been temporarily disconnected.'"

F. A. NEWTON
Utility rate expert.

"Had the electric utilities been free from regulation since 1914 and had they been permitted to charge rates which conformed to the cost of living, as represented by the prices charged by other and unregulated businesses, the rate for household use of electricity would have increased 230 per cent from 1914 to 1920."

Need the Service Charge Be Uniform to All Domestic Users?

What the utility companies are doing to equalize it

By NATHAN B. JACOBS

THROUGHOUT the history of public utility rate making, there has probably been no single feature which has aroused more contention than the so-called "service charge."

Fundamentally, there are only two elements to be considered in determining a rate structure! The first is the value of the service to the consumer; the second is the cost of rendering that service.

OBVIOUSLY, utility rates, to be acceptable, cannot be higher than the value of the service to the consumer who receives it. Nor, on the other hand, can a charge be made for any type of service, without being discriminatory to some other user, which is less than the cost to the utility company of rendering that service.

The simplest test for determining the value of a public utility service is the cost to which the consumer would be put were he to render a similar service for himself, or the cost at which he could acquire a like service from some other source. The commercial departments of utilities are familiar with the necessity of determining the value of the service in order to find the top charge which will still attract the consumer to buy from the utility as the cheapest and most convenient way of obtaining power, light, steam, water, or gas, as the case may be.

On the other hand, it is necessary for the production departments of the utilities to determine whether the service can be furnished at such a cost and still pay a fair return on the capital investment.

Cost analysis has shown that the expenses of production fall into three divisions: *first,* the capacity cost; *second,* the consumer cost; and *third,* the output cost.

The first two items have been taken together in rate making, as the so-called "readiness-to-serve" or demand charge.

IT was natural that the rate-making departments should attempt to formulate the schedules of the utilities along the lines of the analysis which the production departments found to be logical in determining the unit costs of service. Therefore,

public utility tariffs have generally reflected some form of a demand charge which varies with the capacity that the individual consumer demands from the service. In general, the demand charge in water or gas service will vary with the capacity of the customer's meter. In a telephone system, it will vary with the number of trunk lines and extensions. In the electric industry, the demand charges are based upon actual meter readings, or the nature and capacity of the equipment installed.

THIS demand charge, including both consumer costs and capacity costs, is found in various forms in rate schedules. In some schedules, the 3-part rate has been incorporated, while in others, there is only a 2-part rate—a demand charge, and an output charge. In still other schedules, the capacity and consumer costs are taken care of by a "minimum charge," which includes, in addition, a small portion of the output cost.

These various forms of rate schedules do very well in dividing the demand cost between the very large and the very small consumer, but difficulties arise when the analysis is carried to individual domestic consumers. This great group of customers includes those who have but a few rooms and a few outlets, and consequently a small demand, as well as those with large houses and a multiplicity of fixtures and correspondingly a larger demand. In gas and water service, where extensive use of the commodity requires a larger meter, the increased demand charge for this meter automatically takes care of the increased share of the cost attributable to the larger consumer. However, generally the minimum-size meter will take care of all except the largest and most pretentious of the domestic customers.

As a result, therefore, in most domestic schedules of water and gas utilities, the service charge or minimum charge is uniform, regardless of the demand of the individual consumer.

In a recent magazine article[1] Dr. John Bauer states:

> ". . . service charge may be defined as a fixed monthly charge to a consumer which is based neither on the amount of service, nor on the extent of his total capacity to receive service, but on the sheer fact that he is a potential consumer, attached to the system, and capable of being served. It is a separate charge for service as such, as distinguished from a charge for gas or electricity as such."

This definition is contrary to accepted practice in the analysis of public utility costs, because the service charge is based primarily on "the capacity to receive service." It is true, of course, that many domestic consumers do not have the outlets or fixtures sufficient to utilize the full capacity of the meter installed, and consequently when the service charge is based upon the capacity of the meter, as is the usual practice among water and gas utilities, there would appear to be discrimination among individual consumers.

REALIZING that there might be many cases where the outlets and fixtures installed by the consumer were not sufficient to permit that consumer to use the full capacity of the meter, a number of years ago the writer had occasion to study and classify all of the consumers of a wa-

[1] PUBLIC UTILITIES FORTNIGHTLY, March 3, 1932.

ter utility in the preparation of a new tariff, to be filed in compliance with the order of the Pennsylvania Public Service Commission in a rate case. Although all the domestic consumers were supplied with standard ⅝-inch water meters, a complete inspection was made of every installation to determine: first, the number of rooms; second, the number of fixtures, and, third, the relation between these two elements and the average quantity of water used per quarter. In its report, the commission [2] stated:

> "The testimony offered at the hearing with respect to the local conditions, and the character of the respondent's territory, indicated the need of recognizing in the rate schedule the lesser demand made upon the system by and the lesser value of the service to 'small consumers,' who, for reasons of operation and maintenance, were being supplied through a ⅝" meter."

The commission decided to fix the readiness-to-serve charge for ⅝-inch meters by dividing the consumers into two classes: Class A, having three outlets or less; and Class B, having more than three outlets. In this way, they reduced the service charge to the small consumer who did not have sufficient demand to use the capacity of the meter installed, below the service charge to other domestic consumers.

By this classification, there were included in the lower group, or Class A consumers, 35.5 per cent of all of the domestic consumers having ⅝-inch meters. In this particular company, almost half of the consumers use less than 5,000 gallons of water per quarter and of this group of small consumers, 55 per cent were found to be in that class which had only three fixtures or less.

Of the total domestic consumers, only 18 per cent had homes with four rooms or less, but of this group, 75 per cent had three fixtures or less in their homes and 80 per cent of these used less than 5,000 gallons per quarter. This is one example, therefore, where careful analysis of the domestic consumers has indicated the possibility of dividing them into different demand groups for fixing the "service" charge.

A SHORT time later, the Pennsylvania Public Service Commission fixed service charges for a manufactured gas utility.[3] In this case, the commission stated:

> "The ready-to-serve charge is the same for all customers, regardless of the size of the meter. No testimony was offered in support of this feature of the new schedule and in our opinion it is not reasonable and should be changed. The ready-to-serve charge should vary in recognition of the variation in demand, as evidenced by the size of the meter, and a graded schedule should be prepared that will return practically the same revenue that would be received from a uniform ready-to-serve charge of 75 cents per month."

In a subsequent opinion [4] the commission approved readiness-to-serve

[2] Greensburg *v.* Westmoreland Water Co. 3 Pa. P. S. C. 589, P.U.R.1918E, 713.

[3] Light Committee of Council of Lewistown Borough *v.* Penn Central Light & P. Co. (1918) 3 Pa. P. S. C. 890.

[4] (3 Pa. P. S. C. 979.)

"To *eliminate the service charge would be gross discrimination between the consumer, who makes little use of the facilities which he has, and the long-hour user with a high load factor.*"

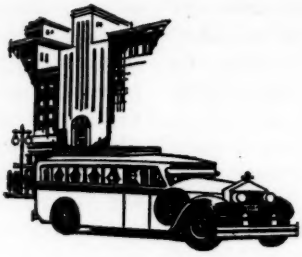
charges varying from 70 cents per month for a 3-light meter to $2.10 per month for a 60A–light meter. As all domestic consumers had 3-light, 5-light, or 10-light meters, this created three separate readiness-to-serve charges applicable to domestic consumers.

Subsequently, the writer made a study of the domestic consumers of another small gas company in Pennsylvania and found that approximately 89 per cent of the patrons used the 3-light meter and that only 2½ per cent of the customers used 10-light to 20-light meters. Under these conditions, it was found that varying the demand charge in proportion to the size of meters would reduce the service charge to the 3-light consumers only 2 cents a month. The commission, therefore, found that under the particular circumstances in this case, it was not necessary to make a distinction in the service charge dependent upon the size of meters, but approved a uniform service charge for all domestic consumers.[5]

HOWEVER, while the size of meter will probably remain for many years as the principal indicator in segregating the demand of the different water and gas customers, the electric industry has proceeded to use other yardsticks in allocating its demand or service charges among the various classes of domestic customers. This is being done by basing the rates on such elements as the number of rooms in a house, the number of outlets or fixtures, or by actual demand determinations. This type of schedule often retains the minimum charge feature and allocates much of the demand element to the first blocks of power consumed. However, it is not necessarily the policy of these schedules to eliminate the service charge, but merely a refinement in the levying of service charges on domestic consumers, so as to offer schedules which will build up the load factors of the consumers, encourage the installation of convenience and labor-saving devices in the home, and improve the value of the service to the consumer, giving him additional power at a low rate, without increasing the demand charges which he must pay.

DR. Bauer's observations are timely, in that they call attention to a condition which the utilities have already made great strides in rectifying. This statement is written only to correct the impression which one may easily have obtained from the paragraph in his article above quoted, that the service charge as among industrial, commercial, and domestic consumers, is inequitable, and to call attention to the fact that as among domestic consumers and in various kinds of domestic service, the utilities themselves are refining the service charge, but not by any means eliminating it. To do so would be gross discrimination between the consumer who makes little use of the facilities which he has, and the long-hour user with a high load factor. The tariff with a reasonable service charge, is desirable, not only from the standpoint of the utilities, but also from the standpoint of the small consumer.

[5] Schaub *v.* Mechanicsburg Gas & Water Co. 4 Pa. P. S. C. 376, P.U.R.1920B, 258.



The Right to Regulate

CONTRACT MOTOR CARRIERS FOR HIRE

The business of private contract motor carriers, conducted for hire on the public highways, may be constitutionally regulated as "a business affected with a public interest," to the extent of requiring a permit or certificate to do business, and of prohibiting undue discrimination affecting motor or other common carriers, or even of regulating the minimum rates of contract carriers. This does not involve any new principle of regulation, states the author of the following article, but only the application of well-settled constitutional principles to the facts of the particular business.

By V. E. PHELPS

THERE are three principal kinds of carriers of goods by motor vehicle operating on the public highways:

First, there are common carriers, which hold themselves out to the general public to carry goods for hire for all alike who offer, without discrimination as to rates or service. These carriers generally are fully regulated, as other common carriers are.

Second, there are private carriers for hire, or what are now commonly called "private contract carriers," which carry for hire the goods of others at rates and terms of service agreed upon between the owner and the carrier.

Third, there are carriers which carry their own goods as an incident to their own business, but, in a legal sense, these are not "carriers" at all, and we are not concerned with them.

It is the second classification which is under discussion here.

IT is apparent that the contract motor carrier differs from the motor common carrier only in that the contract carrier does not hold itself out to carry for all the public indiscriminately, but carriers for whom it chooses and at its own rates and on its own terms and conditions, and cannot be legally compelled to carry for anyone, as may a motor common carrier. In addition to these differences, the contract carrier differs from the common carrier by railroad in that the contract carrier conducts a *business* for compensation on highways constructed, paid for, and maintained by the state, and constructed, primarily, for the general use by the public in the ordinary way and not as

a right of way for a business for hire,[1] while the railroad carrier conducts its business on its own way, constructed and maintained by itself and on which it pays substantial taxes.

In effect, the contract carrier truck says:

> "I admit that I am in large and increasing numbers doing a commercial carrier business on the public highways in direct competition with common carriers by truck and railroad which are fully regulated as such. I make my own rates and charge such rates as will enable me, whenever possible, to procure the most desirable class of business in competition with my common and contract carrier competitors, and to this end, I can and do discriminate and give preferences in rates and service and sometimes carry at less than the cost of transportation in order to secure return loads in conducting my free-lance transportation business. I concede that my business so conducted is making it difficult, if not impossible, for my competitor, the fully regulated common carrier truck, to continue in business, and has seriously impaired the revenues and business of rail carriers, upon which the country must rely as the backbone of its national transportation system and has, also, demoralized and unsettled transportation rates in general. But, notwithstanding these distressing results of my unregulated activities, I contend that my business cannot be regulated, except as to highway safety matters and the requirement of a license fee, because I am conducting a 'private' business and am not a common carrier."

I submit this is a fair statement, put in plain and understandable language, of the attitude and position of a contract carrier.

[1] Packard *v.* Banton (1924) 264 U. S. 140, 144, where it is said: "The streets belong to the public, and are primarily for the use of the public in the ordinary way. *Their use for the purposes of gain is special and extraordinary, and generally, at least, may be prohibited or conditioned as the legislature deems proper.* . . . Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right, and one carried on by *government sufferance* or permission." This indicates that the use of the highways for conducting a business for hire is not a "right," as is sometimes claimed, but is a *mere privilege.*

IN the light of this situation, is it surprising that a demand has arisen for a more stringent regulation of these carriers which will obviate the admitted inequalities and evils inherent in their present unregulated practices? The keen public interest in the matter is shown by the fact that not less than thirty-four states have enacted laws dealing with the operation of contract carriers. These demands have resulted in attempts to impose some sort of regulation on contract carriers, varying from simple regulations for the public safety and protection of the highways (as distinguished from a regulation of their business or rates), which are admittedly valid unless wholly arbitrary, to attempts to regulate the business of such carriers as one to some extent affected with a vital public interest which would justify a limited regulation of their business and practices necessary to remove the evils pointed out.

AMONG the first states to regulate highway contract carriers was the state of Texas, which in 1931 enacted a comprehensive statute which contained a declaration of policy declaring that the business of operating as a carrier of property for hire on the highways was a "business affected with a public interest," and setting forth the reasons for the enactment of the statute, among which were that the use of the highways for transportation for hire may be restricted to the extent required by the public necessity, and the various transportation agencies of the state correlated so the highways may be made to serve the best interest of the public. The

act requires contract carriers to procure a permit from the railroad commission, which may be granted or refused upon consideration of the existing condition of the highways and the adequacy of existing service by common carriers, authorizes the commission to fix minimum rates for contract carriers, not less than those charged by common carriers, forbids discrimination in rates, and requires the keeping of accounts and making of reports to the commission.

The constitutionality of this legislation was recently upheld as to contract carriers by a 3-judge Federal district court in Texas,[2] on the broad ground that this business, *under the facts* in evidence before the court, had become a business affected or clothed with a public interest within the constitutional meaning of that term, because the court, in effect, said the admitted and proven evils arising from the present unregulated operation of contract carriers justified the state in treating all of its carrier services for hire as interdependent and subject to reasonable regulations for the purpose of providing a safe and dependable system of economic transportation. This decision is important, if sound.

THE specific constitutional principle of a "business affected with a public interest" applied in this case is old, dating at least from 1877 in this country and originating more than two and one-half centuries ago in England, though its application to the regulation of contract carriers is first made in this case. But these carriers themselves have only assumed transportation and economic importance within this decade. Those who contend that contract carriers for hire cannot be legally regulated, except by the imposition of a license tax, and in highway safety matters, as private automobiles not used for hire are regulated, have assailed this Texas statute and decision on three principal grounds. They contend:

FIRST: That this Texas statute converts what they claim is strictly a private business into a public business or utility by mere legislative *fiat* or declaration alone[3]; this, admittedly, cannot constitutionally be done.

SECOND: That the fact that contract carriers do not solicit business from all of the public alike (which would make them common carriers), makes them a strictly private business which cannot be regulated, notwithstanding that they do a commercial business for hire on the public highways.

THIRD: That to require of such carriers a permit or certificate to do

[2] Stephenson *v.* Binford (1931) 53 F. (2d) 509, P.U.R.1932A, 1, 8.

[3] PUBLIC UTILITIES FORTNIGHTLY, February 18, 1932, p. 195, and March 3, 1932, p. 284, article by Henry C. Spurr. This article also contends that this case establishes a "new" test of the right of regulation; that the statute unconstitutionally regulates a strictly private business as a public one and requires the surrender of the constitutional right to do a private business as a condition to operating for hire on the public highways.

¶ "NOT *less than thirty-four states have enacted laws dealing with the operation of contract carriers.*"

business on the highways compels them to surrender their alleged constitutional right to do business without regulation. This argument obviously assumes that they are strictly a private business and not one affected with a public interest, which would admittedly authorize their regulation.

IF this statute and decision arbitrarily converted a private business into a public one for regulatory purposes by mere legislative *fiat,* or if this could be constitutionally done, there would be grave cause for concern, for if this can be done as to one private business, it could be done as to all with disastrous consequences. But the very language of the Texas decision shows that this was not and cannot be done. The court says:

> "We recognize, of course, that, against the challenge of its validity *a state statute cannot stand upon legislative declaration alone.* (Citing cases), but those cases and many others clearly establish that in all the courts, and certainly in the courts of first instance, the legislative declaration of purpose and policy is entitled to gravest consideration, and, unless clearly overthrown by facts of record, must prevail.
>
> *"The record in this case teems with evidence supporting the state's declaration of purpose and policy that the use of the highways is affected with a public interest,* and that the conduct of unregulated business over it is bringing about the prevalence of the mischiefs and evils which the legislation in question is designed to avoid." (Italics mine).

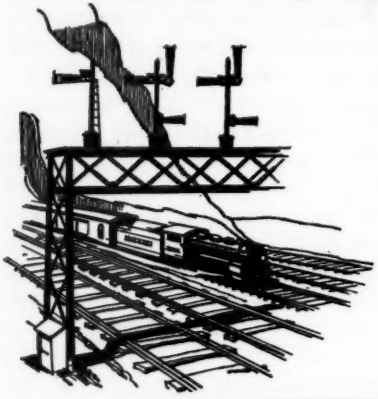
This objection to the decision is, therefore, clearly untenable. It is the facts surrounding the particular business which determines whether or not its effect upon the public is so direct and vital that it may be regulated as a business affected with a public interest. This is important and should be kept in mind. Each case stands upon its own facts.

WHAT is the meaning of this test of regulation? Probably the great majority of the readers of PUBLIC UTILITIES FORTNIGHTLY are associated with a "business affected with a public interest" and should be interested in having an intelligent idea of what this means. It is a mistaken idea, sometimes held, that a business must be a common carrier or "public utility" to be regulated as one clothed with a public interest.[4] Many businesses have been so regulated as to rates and otherwise which are not public utilities in any sense; for example, insurance companies and the cotton gin business. The court has said that businesses not originally of public concern "may arise from private to be of public concern."[5] Change of conditions which accentuate the importance of the business upon the public welfare and require regulation to protect the public interest may bring this about, and it is in this way that the contract carrier business has become affected with a public interest, if it is. The test of regulation laid down by the Supreme Court has necessarily been general in character. In the case last cited the Supreme Court indicates the principle that it has applied in deciding the question:

> "They (the cases) demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. . . . 'The underlying principle is that business of certain kinds hold such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation.'"

[4] Wolff Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522, 535, P.U.R.1923D, 746.

[5] German Alliance Insurance Co. *v.* Lewis (1914) 233 U. S. 389, 406.



"Contract Carriers" *Versus* "Common Carriers"

"THE contract carrier conducts a BUSINESS *for compensation on highways constructed, paid for, and maintained by the state . . . while the railroad carrier conducts its business on its own way, constructed and maintained by itself and on which it pays substantial taxes."*

It also says:

"And we mean a broad and definite public interest. In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation. *We can best explain by examples.*"

The cases hereafter discussed give some of the "examples" here referred to by the court. The business of the contract carrier comes well within this principle and these examples.

The extent of the regulation depends, the court has said, "on the nature of the business, on the feature which touches the public, and on the abuses reasonably to be feared." [6]

WHAT, then, are the *facts* which make the highway contract carrier business one affected with a public interest?

To show the nature and effect of that business on the public interest, I shall refer only to the highest authoritative source—the findings of the Interstate Commerce Commission. In the Fifteen Per cent Case, 1931, *Ex Parte* No. 103, in the matter of increases in freight rates and charges, the commission said:

"The railroads now furnish the backbone and most of the other vital bones of the transportation system of the country, and we believe this will be the situation for a long time to come."

It may be here observed that most of these "bones" are now very prominent to the eye because of the unregulated and governmentally subsidized operations of competing truck, bus, and water-way transportation. In its report on coördination of motor transportation (decided in April of this year) the commission found that 30 per cent, and possibly more, of the truck traffic was carried by contract carriers and that this service distinctly lacked the stability and dependability which "characterizes rail service and has been so important a factor in determining the location of industries and residences." With respect to contract carriers, it said:

"Assuming fewer of the obligations as to safety and financial responsibility than the common carrier, freer to move about in search for profitable traffic, specializing and

[6] Wolff Packing Co. Case, *supra.*

concentrating on certain traffic and rejecting other classes, frequently using inferior equipment and observing low employment standards, these operators have undercut rail rates by varying and often wide margins."

It further noted that the truck has made important inroads into the carload traffic of railroads and "it is steadily increasing its penetration into the field of carload traffic, including the movement of heavy commodities."

REFERRING to the effect of contract carrier operation on the business of common carrier trucks on the highways, the commission said:

"Common-carrier obligations, namely, the maintenance of schedules, readiness to serve all who have freight to offer, observance of published rates, etc., and higher fees and other costs place these operators at a disadvantage *and cause many to surrender certificates and engage in the contract type of operation.* Stated otherwise, contract carriers can seek out profitable lines of work and quickly abandon unprofitable ones, while certificate holders bear greater costs in providing service and also can not abandon their certificates without forfeiting the right to engage again in such operations."

It is, also, noted that "the growing use of trucks necessitates extensive financing of highway construction and maintenance; their operation is attended by danger to persons and property on or in the vicinity of the highways, and is hazardous to the public." The commission also referred to the investigations of particular railroad companies as to the effect of this competition on their traffic. In referring to the evidence of a carrier, with whose investigation this writer is somewhat familiar, the commission said that of its 1930 loss to trucks, 59 per cent, in terms of tonnage, was to contract trucks, 12 per cent to common carrier trucks, and 29 per cent to privately operated trucks,[7] compared with loss of revenue of 39 per cent, 23 per cent, and 38 per cent, respectively. The commission's investigation also found that the loss of railroad revenue from contract carrier competition was often greater than the loss of actual tonnage, because the contract carriers generally took the "cream of the traffic." These facts show a direct and vital interest fully justifying the proposed regulation, because:

First: Regulation of the contract carrier is necessary to prevent serious impairment of the essential rail carrier system and the demoralization of all transportation service.

Second: To prevent contract carriers from driving the state's certificated common carriers from the highways by unregulated competition on uneven terms, and thereby obtaining a monopoly of highway traffic for hire on the state's own highways.

SOME have thought that destructive competition with the rail carrier, however vital its service may be, is not ground for truck regulation.[8]

[7] Atlantic Coast Line R. R. Co. from September 1, 1931, to January 1, 1932, trucks in the territory of this carrier and adjacent southeastern territory moved the equivalent of 2,310 freight cars of citrus fruits; from August 1, 1931, to April 1, 1932, trucks moved the equivalent of 6,180 freight cars of cotton; in five months from January 1, 1931, they moved the equivalent of 17,466 cars of fertilizer, and in the seven months from July 1, 1931, the equivalent of 4,741 cars of tobacco.

[8] *Harvard Law Review*, February, 1931, Vol. XLIV, pp. 530, 537, "Regulation of the Contract Motor Carrier," by LaRue Brown and Stuart N. Scott. This article contends that the business of contract carriers cannot be constitutionally regulated. It wholly ignores the facts herein considered showing the business is affected with a public interest and, in my opinion, contains some assumptions of law or legal inference not justified.

Fortunately, in a very recent decision,[9] the United States Supreme Court has thrown some light on this question. This case upheld the validity of a Texas statute which limited the weight which could be carried by contract and other highway trucks and regulated their dimensions, load, etc., but excepted therefrom vehicles "when used only to transport property from point of origin to the nearest practicable common carrier receiving or loading point, or from a common carrier unloading point . . . to destination." It was contended that this favored transportation by railroad as against transportation by motor truck. On this point the Supreme Court said:

> "It is said that the exception was designed to favor transportation by railroad as against transportation by motor trucks. *If this was the motive of the legislature, it does not follow that the classification as made in this case would be invalid. The state has a vital interest in the appropriate utilization of the railroads which serve its people* as well as in the proper maintenance of its highways as safe and convenient facilities. The state provides its highways and pays for their upkeep. Its people make railroad transportation possible by the payment of transportation charges. It cannot be said that the state is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, *but we perceive no constitutional ground for denying to the state the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain.* This is not a case of a denial of the use of the highways to one class of citizens as opposed to another or of limitations having no appropriate relation to highway protection. It is not a case of an arbitrary discrimination between the products carried, as in the case of Smith *v.* Cahoon, 283 U. S. 553, 567, P.U.R. 1931C, 448."

The italicized language is significant. This sounds very much like the language used by the Texas District Court in upholding the regulation of contract carriers in the case of Stephenson *v.* Binford, discussed above.

A BRIEF reference to several of the decisions of the Supreme Court upholding regulation of the business or rates of businesses which are not public utilities will convince even the lay-reader that the contract carrier comes well within the regulatory principle. In a leading case on the subject[10] the court upheld a statute regulating the rates of fire insurance companies as a business affected with a public interest. It was very strenuously contended, as the contract carriers contend, that the insurance business was a strictly private business consisting of personal contracts with its members which could not be regulated, but the court said that insurance contracts were interdependent in that they had the effect of distributing

[9] Sproles *v.* Binford (1932) 52 Sup. Ct. Rep. 581, 587.

[10] German Alliance Insurance Co. *v.* Lewis (1914) 233 U. S. 389.

¶ "IT *is a mistaken idea that a business must be a common carrier or 'public utility' to be regulated as one clothed with a public interest. Many businesses have been so regulated as to rates and otherwise which are not public utilities in any sense.*"

the cost of inevitable loss from fire over the whole country, and had greater public consequences than ordinary contracts between individuals whose effect stops with the individuals, and added: "We may say in passing that when the effect goes beyond that, there are many examples of regulation."

In a similar way, the contracts of contract carriers, though personal with their shippers, have a direct and injurious effect on the business of common carriers by highway and rail, which is a legitimate object of public concern and protection. The court, also, held that the fact that the insurance service could not be demanded or compelled (as can common carrier service) would not prevent its regulation. This is, also, applicable to the contract carrier. In a late decision,[11] the court held that the commissions of insurance agents could be regulated.

In other leading cases[12] the court held that the business of grain elevators was affected with a public interest justifying the regulation of rates. In the Munn Case, the decision was based partly on the ground of possible monopoly in the business and the monopoly feature has been relied on in some other cases. As has been seen in the findings of the Interstate Commerce Commission, the operation of contract carriers without regulation threatens to monopolize the highway carrier business on the state's own highways, and this threatened monopoly alone justifies regulation, aside from the broader public interest involved in the impairment of railroad transportation. In a later grain elevator case the court said that the monopoly feature was not essential. The Budd Case is particularly applicable here. That case involved an elevator at Buffalo, N. Y., which was used as one of the agencies to transfer grain from lake vessels to barges operating through the Erie canal, a transportation facility described as useful to the public.

The court said:

> "The public has a deep interest that no exorbitant charges shall be exacted at any point, upon the business of transportation; *and that whatever impaired the usefulness of the Erie canal as a highway of commerce involved the public interest.*"

It may be said with even greater force that whatever impairs the essential common carrier systems of the states and nation, likewise involves the public interest.

The following businesses—which are not public utilities—have also been held to be affected with a public interest and subject to regulation; commission merchants in stockyards;[13] live-stock yards;[14] boards of trade;[15] cotton gins in Oklahoma.[16] On the other hand, the court recently held[17] that the ice manufacturing business in Oklahoma was not a business of sufficient public importance,

[11] O'Gorman & Young *v.* Hartford Fire Insurance Co. (1931) 282 U. S. 251.

[12] Munn *v.* Illinois (1877) 94 U. S. 113; Budd *v.* New York (1892) 143 U. S. 517, 533; Brass *v.* North Dakota (1894) 153 U. S. 391.

[13] Tagg Bros. & Moorhead *v.* United States (1930) 280 U. S. 420.

[14] Stafford *v.* Wallace (1922) 258 U. S. 495.

[15] Board of Trade *v.* Olsen (1923) 262 U. S. 1.

[16] Frost *v.* Oklahoma Corp. Commission, 278 U. S. 515, 519, P.U.R.1929B, 634.

[17] New State Ice Co. *v.* Liebmann, P.U.R. 1932B, 433.

The Danger Ahead—Unless the Competitors of the Railroads Are Regulated

"If the railroads should fail because of the continuation of the present unregulated and unfair competition, either inadequate transportation under private management or a taking over of the railroads by the government must inevitably result."

and was not attended by such evils affecting the public, as to justify its regulation by requiring a certificate as a condition to doing business, and, therefore, was not affected with a public interest. This indicates that the court will not permit the regulation of any or every kind of business. To sustain such regulation, it must find a substantial and definite public interest, the protection of which reasonably necessitates the proposed regulation.

None of the above cases involve a public utility, and in view of these decisions, considered in the light of the facts surrounding the business of contract highway carriers and the admitted and proven evils flowing from their unregulated competition, there can be no reasonable doubt that their business is clothed with a public interest and that it can be appropriately regulated to remove the existing evils and inequalities.

All argument against regulation based on the contention that the contract carrier business is strictly a private business, falls to the ground if, as is shown, the business is affected with a public interest, because it then *ceases to be a private business,* even though it is not, at the other extreme, a common carrier.[18] Likewise, the argument that to require a permit or certificate to engage in business compels all such carriers to surrender constitutional rights. If they are clothed with a public interest and if, as the Supreme Court holds, the state has the "right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained," no more appropriate means to this end can be conceived than the requirement of a permit based on existing necessity for additional highway carriers. The question of depriving contract carriers of constitu-

[18] Here may be mentioned the case of Frost *v.* California R. Commission, 271 U. S. 583, P.U.R.1926D, 483, relied on by opponents of regulation. This case held a California statute unconstitutional which defined "transportation companies" as including private contract carriers, and at the same time imposed all of the obligations of a common carrier on such companies and required them to obtain certificates to do business. The state admitted that the carrier in question was not a common carrier and yet applied all of the obligations of the statute to it, which the United States Court said could not be constitutionally done and that the same result could not be brought about indirectly by imposing such regulation as a condition to doing business. This is simply holding that a contract carrier cannot be regulated as a common carrier, *which it is not,* but this does not mean that it cannot be regulated as a carrier business affected with a public interest, *which it is.* This case is, therefore, not contrary to the regulation suggested.

tional rights, as a condition to operating on the highway is, therefore, not involved.

THE unregulated and subsidized competition which is of such vital concern to common carriers cannot be a matter of indifference to other public utilities. The rails carry about 76 per cent of the total traffic of the nation. That trucks can never be the principal agency of transportation in the scheme of national economy is plain from the single fact that a train with six men can transport over 800 tons in one movement, while the trucking system with six men using 3-ton trucks can only transport 18 tons. If the railroads should fail because of the continuation of the present unregulated and unfair competition, either inadequate transportation under private management or a taking over of the railroads by the government must inevitably result; either contingency would vitally affect the business of the country, including other utilities. In the latter event, other sources of taxation would have to be found to replace that lost from the railroads and other utility corporations would be the most likely sources to bear the brunt of increased corporate taxation.

It seems clear, therefore, that irrespective of any petty advantage that may possibly accrue from lower truck rates by unregulated subsidized truck carrier service, the real and ultimate interest of the substantial business of the nation, including that important part of it engaged in the public utility field, demands a speedy solution of the problem by regulation, both state and interstate, which will remove existing inequalities and burdens in the transportation field and regulate all alike.

The justness and necessity of this course should appeal with peculiar force to those operating other regulated utilities.

Five Fallacies About the Electric Utilities:

By H. P. LIVERSIDGE

1. That electric energy can be transmitted great distances with economic justification.

2. That because local electric systems exist side by side, complementing each other, wherever their lines touch, they, as a group, form a single, magnified network.

3. That natural water power, if fully developed, would supply a very important part of the total demand for electric energy. (This is particularly fallacious in the industrial East.)

4. That mouth-of-mine generation of electricity gives proper weight to all the factors involved.

5. That great extension of interstate transmission lines so vast and complicated as to form almost an entangling web—endangers the very life and progress of our nation.

OUT OF THE MAIL BAG

The Vicissitudes of the State-owned Railroad with the Politicians of Georgia

MR. AARON HARDY ULM, in his article "Why I Believe in Private Ownership —Unless" that appeared in PUBLIC UTILITIES FORTNIGHTLY of December 24, 1931, has presented the case of public ownership of a utility in a fair manner.

I have had about fifteen years' intimate contact with the Western and Atlantic Railroad of the state of Georgia; during that time I have made a careful study of its history from the inception of the project to the present day, so that I am in position to agree with practically all of Mr. Ulm's statements and conclusions. But in particular, I am glad to state that the Georgia Public Service Commission is now vested with authority to supervise the property and exercises its powers. It has also collected all available records.

Created by legislative enactment in 1836 and financed first from funds obtained through state bonds and then from earnings, the road has remained in possession of the state of Georgia, and was operated by the state until December 27, 1870. The "carpet-bag" régime had used the road to serve its own political ends and for the personal advantage of those in control of the government until the conservative men of the state combined to remove it from politics and the road was leased for twenty years to a strong company organized for the purpose.

At the end of the first lease and for more than forty years the Western and Atlantic Railroad has been leased to the Nashville, Chattanooga and St. Louis Railway which has been a very satisfactory arrangement. The monthly rentals have been paid with regularity and the lessee has maintained the road up to the highest possible standard of efficiency.

Aside from the revenue the state has received from the road over a period of more than seventy-five years, its construction caused the development of the northern part of Georgia far in advance of the neighboring sections and gave Atlanta its preëminent position in the southeast.

MR. Ulm has put his finger on the chief objection to state operation of utilities; the constant change in management. The Western and Atlantic Railroad, even under the best conditions, was controlled politically, and practically every change in the chief executive resulted in a change of the principal officers, so that there was no definite, continuous policy. Furthermore, with the uncertainty of tenure, efficient railroad men realized that there was no future for them, and the few competent managers that the state did secure rarely remained in the service more than two years. The wonder is that the property was a successful venture from a financial standpoint during the period of state operation. The yearly rental is a fair return on the original cost of the road but not on its present value which has been greatly enhanced. This enhancement is due to the development of the territory and to the improvements in the physical property, to which the state of Georgia has not contributed in either instance.

The complete story of the road from its inception to the present time is contained in a book just off the press entitled "The Western and Atlantic Railroad of the State of Georgia" which I have compiled in pursuance of legislative authority.

—J. HOUSTOUN JOHNSTON,
Consulting engineer,
Georgia Public Service Commission.

The "Most Successful Municipal Power Plant" in Massachusetts

THE occasional references in PUBLIC UTILITIES FORTNIGHTLY to "taxless towns" whose expenses are reputed to be paid out of the profits derived from their municipal power plants, prompt me to report a personally conducted tour of investigation of Hudson, Massachusetts. I wanted to learn what I could of its boasted success under municipal ownership of its electric lighting plant.

Hudson is a town of 8,500 population. It began its municipal socialism back in 1897. Up to 1924 it charged very high rates; its

rate in 1924 was 13 cents per kilowatt hour for residential service. It is now 5½ cents, with a half cent reduction for prompt payment.

The present valuation of the plant is reported (in round numbers) at $495,000, but an electrical engineer says that it has actually cost $788,770.

I was told by leading citizens, including the editor of the local paper, that the tax rate this year will be $35.40 per $1,000 of valuation. This is a high rate but it was $37 in 1929.

If this $788,770 had been invested in bonds at 5 per cent it would have brought into the town treasury the sum of $39,438. The tax rate of $35.40 on this valuation would total $27,922.45 and the two make $67,360 a year, on the red ink side of the ledger. Two rooms in the town hall are used for office free of any charge, and a part of the collection service is saved to the plant, making in round numbers $70,000 on the wrong side of the ledger.

THE lowest rate for commercial service in Hudson is 2.3 cents per kilowatt hour. Here in Haverhill the lowest rate is 1.7 cents per kilowatt hour, and Haverhill electric light plant pays over $103,000 a year in taxes. This tax figures up at 2½ cents per kilowatt hour for all residential lighting. The commercial rate in Hudson runs from 4 down to 2.3 cents. In Haverhill it runs from 1.77 up to 3.99. Thus we see that for commercial service the rates in Haverhill, are below the socialized rate in Hudson—if we reckon in the taxes. The Hudson plant uses oil for generating entirely and saves 30 per cent over the cost of coal. Hudson has recently reduced the wages and salaries of all its municipal employees by 10 per cent.

HUDSON is one of the few municipal-owned plants that we count as a fair success, but if we reckon interest at 5 per cent upon the money that has gone into the plant and taxes at only the same rate as real estate pays, the Hudson plant loses money every year, compared with private ownership in this state.

Yet, Hudson boasts that it is the "most successful plant in the state."

Suppose now that this and other socialized plants make money and actually save the consumer a few cents a month on their light bill; does this pay for the encouragement and growth of the socialistic movement of America? If a plant is a real success it does boom socialism; if it is a failure, it hurts every man, woman, and child in the town.

The average consumer pays 30 per cent more for the movies than he pays for his electric lighting. Why make a mountain out of a shovel of sand?

—F. G. R. GORDON,
Haverhill, Mass.

The Reason for the Growth of Government Ownership in the West

MY attention has been called to an article by Francis X. Welch in PUBLIC UTILITIES FORTNIGHTLY entitled "Is the Municipal Plant a Social Phenomena?" in which he attempts an elaborate and painstaking analysis and survey of the incidence of public ownership on the Pacific Coast and endeavors to account for it. He considers religion, race, density of population, mismanagement, high rates, natural advantages, and traditional respect for property rights as factors and quite properly, I think, at once rejects the first four. In weighing factor number five, high rates by privately owned utilities, he quite overlooks dates; the municipal light plants in Seattle and Tacoma have been in operation twenty-five years or more and in Los Angeles nearly as long. The low rates on the Pacific Coast are the *effect* not the cause of public ownership sentiment.

Natural geographical operating advantages were also, undoubtedly, a factor in Seattle and Tacoma—oddly enough natural geographic disadvantage was a factor in Los Angeles. The city had to go 240 miles to the Owens river for a water supply—having done so, what was more natural than to use the overflow to operate a hydroelectric plant?

We now come to the seventh and last factor—traditional respect for property rights. Not only is he wrong as to his facts but as to his conclusions.

The people of the Coast do not lack respect for property rights. Those among them who took up government lands and their descendants form but an insignificant fraction of the population and furthermore, are, as any one acquainted with facts will tell you, to a man opposed to public ownership of the utilities.

New Englanders and their descendants form the largest native born element of the population of this section. People from the southeastern states and the Mississippi valley and their descendants form the next largest element. The foreign born have come from Great Britain, Canada, Germany, and the Scandinavian countries. None of these people are lacking in traditional respect for property rights and if you think the people of Los Angeles lack such respect for property rights, you should go there and attempt to buy a lot.

I fear that for all the author's elaborate set-up of colored pins and research and diagnosis of what he seems to consider an abnormal psychosis regarding public ownership, he has overlooked the real reason; we have tried public ownership and found it good.

—FRANK H. COPP,
Seattle, Washington.

What Others Think

The St. Lawrence Power Project Enters the Presidential Campaign

APPARENTLY the State Department of the Federal government is still able to carry on one of its most important functions under the Constitution—negotiating treaties with foreign powers—without the help of the Power Authority of the State of New York or of the Democratic candidate for President. At least, Mr. Hoover must have thought so when he telegraphed Governor Roosevelt assuring him:

> ". . . that the negotiations between the United States and the Dominion of Canada in respect to the Great Lakes Waterway are making progress and that it will not be necessary to interrupt your cruise by a visit to Washington."

In a telegram to the President dated July 9th Governor Roosevelt said:

> "I hold myself subject to your call and am ready to go to Washington on forty-eight hours' notice at your convenience."

There are very few men in the United States who would not start for Washington in forty-eight minutes with nothing more than a tooth brush and a clean shirt if invited to have a snack with the President. This fact, however, is not important. The significant statement in the governor's telegram is to be found in the last half of the second sentence, fourth paragraph, (New York *Times* paragrapher). It reads:

> ". . . this great project involves two objectives of equal importance and cannot in public justice accomplish one without the other."

He means that the location of a New York state-owned and operated electric power plant along the St. Lawrence is of equal importance with the development of the river for navigation purposes as part of a Great Lakes to the sea water-way for the benefit of all of the people of the United States and Canada. I seem to remember a battle put up by New York state for an all-American route, making use of the old barge canal which certainly would not "accomplish" a government-owned and operated hydroelectric plant on the International Rapids section of the St. Lawrence river.

To the President, the St. Lawrence River project is a "ship-way from Duluth and Chicago to the sea" and electric power is only a "by-product." He makes this very clear when he says to the governor:

> "The question of the disposal of the by-product of power which will result from the works which border the state of New York, like all domestic questions of this character affecting the two countries, is reserved by the proposed treaty for purely domestic action by each country. This disposal is not the subject of international agreement."

For the carefully worded "report" composed by the Power Authority of the State of New York to serve as a back-ground for the governor's telegram (making a front page story) are reserved the two prize statements in the whole publicity lay-out. Complaining about the contribution toward construction costs supposed to be made by the state (the amount presumably suggested by the State Department) it says that "it would frustrate the entire purpose of the New York law to provide cheap electricity for the industries and homes of the people and drive industry and American capital across the Canadian border." It also claims an oral agreement with State Department authorities to the effect that "the state of

New York shall have title to the power houses and control all of the power produced on the American side in perpetuity."

This is the first we have heard that American industry and capital are being driven into Canada by conditions surrounding the production of electric power in New York state. It does not sound reasonable.

The message which the average American citizen will get out of the Power Authority's report will be something like this:

Owing to excessive rates for electric light and power and poor service in New York state, industry and capital are being driven across the border and the home owner denied his right to good service at reasonable rates. We propose to undersell existing light and power companies and drive them out of business. To do this we will have to limit the capital investment of the state and the taxpayers of the United States will have to carry the balance of the burden. However, we propose to own and control the power development and its entire product.

In considering Governor Roosevelt's policies and his attitude toward the electric utilities, the following facts should never be forgotten:

The production of electricity as a by-product of some great governmental project intended for the benefit of all of the people and which does not come within the functions of private capital is sound provided government does not engage in competition with its own citizens. The production of electric light and power and its distribution in competition with existing privately owned and operated companies and at the expense of the taxpayers as a whole, is another matter, and one which has already played an important and continuous rôle in the great American game of politics.

—ERNEST GREENWOOD

Does the Electrical Industry Want Holding Company Control?

RECENT regulatory events have precipitated something in the nature of a crisis with respect to the future attitude of the public utility holding companies toward regulation and the attitude of the official regulators towards the holding companies.

In the recent annual convention of the National Electric Light Association at Atlantic City the address of Floyd B. Carlisle was widely hailed as marking the decision of the electrical industry to put its house in order so far as concerns the holding company problem—to repudiate, as an industry the misdeeds or mistakes of some members of the industry and in general to pursue a policy of coöperation with the regulatory commissions as much as possible, to make future regulation a success and to make the future reputation of the industry beyond reproach.

Shortly after this development, however, the Wisconsin and Alabama commissions issued orders forbidding certain utilities to declare further dividends until approved by those commissions as being actually earned and warranted.

This led to some resentment. Some utilities even felt that the commissions' actions were based only on suspicion, and probably some feel like fighting back through the Federal courts. How will the newly born peace dove fare in this threatening weather?

A New York *Times* news item seems to indicate that the electrical industry will continue with its new policies, notwithstanding the dividend orders. It stated in part:

> "On the eve of what had been expected to be a general adoption of a policy of coöperation with regulatory authorities, calling for friendly compromises instead

of legal battles, the electric power and light industry yesterday appeared to be desirous of adhering to its platform, although some of its leaders were strongly critical of the Wisconsin commission."

THIS leads to the question: Does the electrical industry really want electrical holding company control?

Mr. Carlisle's speech indicated that perhaps the leaders of the industry are beginning to wonder if the policy of evasion and delay, pursued by certain holding companies in their relations with commission regulation, is not proving to be a short-sighted and destructive policy, gauged merely by standards of smart business. There is little doubt but that the silence and in some cases resistance (even though it be a resistance permitted by law), of some holding companies in the face of regulatory investigation have provided ammunition for their enemies' guns. They seem to ignore the fact that these cases are tried not only in the law courts but also in the newspapers, over the radio and on the street, and that a popular verdict from such popular tribunals is often more important and far-reaching than a Federal restraining order.

Such, in effect, was the argument of Professor William Z. Ripley, writing in the August issue of the *Forum* on "Public Utility Insecurities." Professor Ripley soundly berated certain financial manipulations by various utility holding company groups. He added, however:

"I would not unnecessarily alarm. There is yet time, owing to the inherent soundness and the lusty vigor of this great public industry, to close the door against certain indirect practices. But it is high time that those who have the public welfare at heart should look alive. Encouragement of such legislation as shall guard against the recurrence of these evils becomes a matter of public duty.

"It should be understood that these criticisms are neither indiscriminate nor universal. No general demoralization among the public utilities exists. These comments are applicable to those alone which are off color. The chief of this industry is honest, well-meaning, and intelligent. It has more at stake in the prevention of unsound practices than almost anybody else. Its credit, that is to say its good repute, is in question. These men, the better part, may be expected to coöperate with the savings banks and the life insurance companies in such action as shall, through disclosure of all evidences, whether of worth or of unfitness, aid in the preservation of its high estate. It is with that constructive end in view that these comments are presented."

PROFESSOR Ripley conceded that the more deserving managements were recognizing the need for simplification of the corporate structure (a reform which he believes to be sorely needed). He states that the interests of the sound and conservative managements in the public utility field are tied up neck and heels, so far as good repute is concerned, to corporate miscreancy. Probably Mr. Carlisle and others are beginning to feel the same way about it. Viewed in this light, it is certainly for the best interest of the industry to coöperate with the commissions in washing out the taint of holding company abuse.

The principal objection made by Professor Ripley to the present holding company practice is that the corporate structure is unnecessarily complicated. Paper corporations are constantly being created and employed as ducts to drain earnings from sound operating members of the family to weak sisters, degenerate brothers, and greedy parents. Paper corporations are used to unload doubtful securities and to mystify the investors as to what is behind them. Simplicity is the note struck by Professor Ripley—simplicity in corporate structures and corporate accounting.

Granting the peculiar advantages resulting from the coalition of operating units under a common holding control, why not eliminate these unnecessary nonoperating, paper corporations that serve only to clutter up the structure and baffle the investor and regulation alike? Professor Ripley wants not only corporate birth control but, in necessary cases, corporate parricide.

In the cause of simplified accounting, Professor Ripley strikes a neat blow. He says:

"The inter-relation between fair charges to the consumer and prudent commitment by those who contribute their savings

through investment is indisputable. And the manifest advantage of direct comparability, through uniform sets of accounts, is as great to the consumer as to the prospective investor. Such comparability affords one of the surest checks upon both fairness of rates and efficiency of management."

Professor Ripley concluded his argument with some discussion of the constitutional objections to his proposed reform—Federal supervision of holding company accounts with a requirement of uniformity and publicity for the same.

As evidence of the fact that the industry itself is not entirely opposed to Professor Ripley's proposals, here is a passage from an editorial in the *Electrical World:*

"There is little objection to the idea of Professor Ripley for enforced standardization and publication of utility corporation financial reports. Publicity of accounts would give both the genuine investor and the legitimate corporation firmer ground to stand on and might serve as a check to both speculative investors and stock-manipulating corporations. At the present time there is little standardization in utility annual reports, especially those presented by holding companies, even though an accountant finds but slight difficulty in arriving at complete facts.

"A second suggestion of Professor Ripley is that publicity of the holdings of corporation executives and directors would be effective in bridging the gap between owners and managers. This gap is often wide in the large corporation, but we doubt if publicity alone will solve the intricate problems associated with diversified stock ownership found in modern corporations. In less degree than ever before is it possible for executives and directors of corporations to maintain ownership of their enterprises—they are becoming managers for a large group of stockholders. It is impossible for these stockholders to act intelligently on corporation business affairs and they must rely upon the integrity of their corporate managers rather than upon their ability to analyze financial statements, however detailed these may be. Complete publicity of stock holdings and uniformity in financial statements, however, would aid the development of better stockholder-manager relations and would make easier the measurement of relative investment values in corporation securities."

If the industry continues to follow this submissive policy, there may be a repetition of the evolution which Professor Ripley described as having taken place in the railroad field where, some years ago, certain corporate structures were involved and under considerable suspicion. The professor claims that the railroad industry has benefited by the extension of Federal supervision and would not change places with their unregulated predecessors even if they were given the choice.

—M. M.

UTILITIES SCORE WISCONSIN BOARD. New York *Times.* July 17, 1932.

PUBLIC UTILITY INSECURITIES. By William Z. Ripley. *Forum.* August, 1932.

EDITORIAL. *Electrical World.* July 2, 1932.

The Octopus Makes Its Bow on the Silver Screen

THE power fight has finally reached Hollywood. "The Washington Masquerade," the first of a promised series of movie classics exposing the Power Trust, has been released. It boasts of a Barrymore in the leading rôle and a modern version of Washington political intrigue but its spirit is the departed spirit of genial Tom Wise playing "The Gentleman from Mississippi" opposite a lovely cocktail-sipping blond lobbyist whose intentions towards him and the folks back home were strictly dishonorable.

The play depicts an honest, shrewd, but apparently a somewhat simple-minded lawyer, Jeff Keane, who, stung by the corruption of an unscrupulous judiciary whose unfair conviction of his innocent boy client for murder (no explanation is given for the jury's action in convicting the boy in the first place) was thwarted only by an appeal to a righteous governor, determined to

run for judge himself. The opposing judge, however, proves to be the mere creature of Senator Bitler whose arrogance finally moves Keane to change his plans and run for Senator from Kansas. Of course, the "people's choice" is elected and immediately plunged into the iniquities of the Washington merry-go-round. Here this newly elected Senator comes upon a deep-laid plot of private interests to steal the people's power resources. He finds himself spurned even by his own state colleague, Senator Withers, and is presented to the Senate by a Senator from another state. But in his maiden speech he pulls aside the curtain that veils the hideous power trust octopus and moves packed galleries into thunderous applause (which, in the opinion of a Washingtonian who has heard a number of maiden speeches, is quite a precedent in itself) by his scathing denunciation of the robbers of the people's power birthright. During this speech the power trust Senators (and they seemed to be in the majority) just crouch in their seats and gnaw their pudgy fingers bloated with ill-gotten gains.

Senator Keane's speech wins for him a very liberal offer from the Power Trust lobbyist, Mr. Hinsdale (a gentleman who looks more like a real "Harold Rassendale" villain than anyone who has played around these parts since East Lynne). Senator Keane replies in the approved cinematic fashion, "Take back your gold"—or words to that effect.

Foiled in their base attempt, Hinsdale procures the beautiful Karen Morley, playing as Consuela Fairbanks, to entrap the intrepid Kansan—and does he *like* it!

THE most unusual feature of the play now happens. Instead of using him as a tool and throwing him aside like a broken toy, Miss Fairbanks actually marries the Senator, subsidized, of course, by the Power Trust who probably passed the expense of this promotional venture on to the ratepayers. Once married the Power Trust wife proceeds to plunge the hero into debt. His own daughter warns him but is sent away from home for her pains. Goaded by the vampire and threatened with financial ruin, Senator Keane finally makes a deal with Hinsdale, but, apparently, the alert sentinel of the people's rights is not such a smart business man because he fails to get cash for his surrender. His bribe is to come in instalments and legal retainers. He is set up in a fine law office in the Power Trust Headquarters overlooking the East entrance of the Capitol (from this reviewer's knowledge of Washington, this would place him just about alongside of the present Methodist Building)—all as a consideration for his resignation as Senator.

Hard luck now overtakes the hero. The Power Trust apparently failed to keep its organization working smoothly because the Senator finds his wife in the arms of a former lover—another Power Trust minion. The boys from back home begin to drop in and ask why their champion has deserted the people's cause. Finally the Power Trust itself seems to go to pieces. A rival group promotes a Senate inquiry into the activity of Hinsdale. He is asked to explain certain checks payable to Keane. Hinsdale is lying out of the matter in a very efficient, if not exactly creditable fashion when the old flame of the people's cause blazes up in the breast of the broken Kansan. He arises in the Senate hearing room—repudiates Hinsdale's alibis, confesses that he has taken bribes for betraying the people, and finally expires with only the consolation that he has at least exposed the whole filthy mess and made way for a more faithful servant to pick up the torch of government ownership and carry on.

MR. Lionel Barrymore gives a good show, because — sterling actor that he is—he can scarcely do otherwise. But his sophisticated performance of what is supposed to be a rather simple-minded Kansas lawyer does not quite ring true. One can almost feel

that Barrymore is winking and even burlesquing during the more melodramatic passages. The important fact about this picture and probably about other pictures of its type, which are to follow, is that they will be very effective in linking the Power Trust in the minds of the masses who patronize movies with the grotesque monsters and octopi which they see in antiutility newspaper cartoons. Whether or not it was intended as such, "Washington Masquerade" is propaganda of a very unfair and inflammatory nature. Aside from that, it reflects very much upon the integrity of the United States Senate and the whole Kansas judiciary.

There is much to be said on both sides of the government ownership controversy. But the merits of the question cannot intelligently be argued from the stage. Yet dramatic presentations have more real effect on the popular mind than formal argument. Uncle Tom's Cabin bred more hatred between the North and South than many speeches in Congress. In fact if the Power Trust minions were as smart as they are supposed to be they would have stopped paying good money to doddering old college professors and gone out to Hollywood. But they have been beaten to the draw.

—F. X. W.

WASHINGTON MASQUERADE. A Metro-Goldwyn-Mayer Production. Adopted from "The Claw," Henry Bernstein. Released July 1, 1932.

The Effect of Governor Roosevelt's Election upon the Utilities

WHILE the Democratic candidate for President, Governor Franklin D. Roosevelt of New York, is campaigning to make the United States safe for Democracy, in the partisan sense of that term, the utility industries and their opponents are beginning to wonder if such Democracy would be safe for the utility industries. There is a startling lack of unanimity of opinion on the subject.

If the conservative, that is to say the utility and financial, publications all entertained one opinion and the radical publications contained an opposite view, the conflict might not be so surprising. But when we find such progressive weeklies as the *Nation* and *The New Republic* differing as to the progressive status of the Democratic candidate, while such conservative organs as *The Financial World* and the Philadelphia *Ledger* disagree on the same point, it is apparent that the American voter is confronted with a real puzzle when he attempts to classify Governor Roosevelt. *The Financial World* concedes that "Wall Street's lack of enthusiasm toward Mr. Roosevelt's ideas concerning utilities, in particular, is well known," but goes on to say:

> "Although Franklin D. Roosevelt generally accredited with membership in the growing ranks of political 'liberals' and his victory at Chicago has been hailed by the progressives as a blow to private public utility interests, his record as governor of New York furnishes meager proof of hostility to the power interests. The governor's entire dealings with the utilities in New York state have been practically confined to his plan for the development of the St. Lawrence power project which was actually inherited from the Smith administration. While in favor of development of power sites on the St. Lawrence by the state he is in accord with the views of his Power Commission that energy developed be sold under contract at the site to private power companies for distribution to domestic consumers."

APPARENTLY the governor's animosity for the utilities has to do with what he regards as improper and inadequate regulation and control. In an address to the state legislature in January, 1931, recommending the St. Lawrence power project, he stated:

"Hitherto we have relied wholly on public service commission regulation of rates. We all know the long story of how court decisions, valuations, rate bases, complicated accountings, newly invented methods of finance and unsatisfactory leadership in the public service commission itself have made impossible the fulfillment of the original purpose of regulation."

Concerning this phase of the governor's position on utilities, *The Financial World* states:

"While it is true that in a number of instances commission regulation has proved inadequate, this has been due to their lack of fuller power to deal with the complicated questions involved. Progress of utility regulation has consistently taken this direction for as yet no acceptable substitute has been found, nor has the governor proposed one. The power question which he has dealt with in New York is peculiar to the state, and the remedies proposed are totally inapplicable to the country at large. Roosevelt's views on regulation of the utilities are shared by many utility executives themselves; they only disagree as to the correctives."

MR. FLOYD W. Parsons, well-known spokesman for the gas industry, writing in *Gas Age-Record*, apparently sees nothing to be alarmed about in the election of either Governor Roosevelt or the reëlection of President Hoover. He writes as follows:

"It is difficult to understand the logic of those who are now so greatly disturbed over the political outlook. A great many of my friends express alarm over the radical tendencies of this candidate or that. Surely one of the most helpful signs of the present day is the evidence of a growing consciousness that it is futile to build a new era on the same foundations that went to pieces under the weight of what we called good times. . . .

"We should get clear in our minds right now that it is ourselves we must fear, not our political parties. Reasonable radicals are a good thing in a country like ours, for they keep us from going to sleep. Experience has taught us that the man with an idea that is crazy and destructive does not get far with his plan. Final action is practically always a compromise between the various forces. . . .

"Let us be fair and think clearly in this time of trial. With the greatest depression in world history coming upon us when our affairs were controlled by two of the most conservative administrations this country ever had, it is actually funny to hear the opinions concerning the evils that may result if this party or that party gets into power."

Mr. Parsons' position is somewhat similar to that taken by *The Wall Street Journal*, as far as apathy towards the election of either candidate is concerned, except that Mr. Parsons seems to be optimistic, while *The Wall Street Journal* seems to take the position that politicians have done just about all the injury to business that they could possibly do. The latter appears to believe that the Republicans have the stronger candidate, while the Democrats have the better platform, and concludes:

"No attempt to measure the relation between politics and business this year can ignore the low state to which the latter has already fallen as the campaign opens. It is not a wail of despair but a calmly practical view to assume that politics has already injured business about as much as it can and to surmise that the further progress of the presidential campaign is more likely to help than to hinder recovery."

FOLLOWING this editorial, a news item in the financial section of the New York *Times* pointed out that stocks did not decline terrifically at the mere nomination of Governor Roosevelt. The item indicated that Wall Street had already discounted in advance the governor's nomination. It said:

"For the initial weakness, Franklin Roosevelt's nomination by the Democratic convention was commonly assigned. The candidate's expressed views on the power question have not been entirely reassuring to conservative watchers of the course of politics, and Mr. Roosevelt's highly unfortunate attempt to belittle President Hoover's achievement in averting the crisis, which at the year-end confronted banks and fiduciary institutions, did not help. But Mr. Roosevelt was all along the strongest political probability, and financial markets had probably 'discounted' beforehand whatever feelings in these matters may have been entertained."

WHEN *The Nation* joins such conservative company in the opinion that Governor Roosevelt is not as progressive as he might be, it becomes apparent that the difference on that point

of opinion is genuine and widespread. An editorial in its July 6th issue states:

"In the confusion that besets the Democratic convention as we go to press one thing stands out clear and unchallengeable. That is the unashamed renunciation by Franklin D. Roosevelt of his last pretension to progressivism. He has joined the old guard of political sharpers. Indeed, the brazen tactics of his managers in Chicago, which the governor himself has been directing by telephone from Albany, are such as to leave even the Tammany crowd gasping. His opponents should have been forewarned by his repudiation of his promise to support Jouett Shouse for the permanent chairmanship of the convention. But they were obviously not prepared for the next move in the Roosevelt program; they were taken by surprise when the Roosevelt managers announced, with the approval of the governor, that they would seek to abolish the ancient rule of the party whereby a presidential nominee is chosen by a two-thirds vote. Such a change in the convention rules requires only a majority vote. The Roosevelt announcement was simply a confession of fear that the New York governor could not win by following the established rules of the game. Of course, except in form and audacity, there is nothing particularly new in this latest manifestation of American political ethics. Yet we had hoped for something better from Franklin Roosevelt. We had never deceived ourselves as to his weak and vacillating statesmanship, but we had believed him honest and sincere. Instead, he stands revealed as ready to lend his support to any trick or device that will advance his personal political fortunes. Even more discouraging was the failure of such supposedly Progressive Senators as Burton Wheeler and Clarence Dill to disown Roosevelt when he showed his true colors."

Now for the other side of the picture. *The New Republic* certainly a progressive weekly, finds in Governor Roosevelt a desirable if not an ideal candidate. In a July 13th editorial it stated:

"In nominating Franklin D. Roosevelt, the Democrats undoubtedly put forward the best man among those who had any chance at all of being chosen. We are well aware of the objections to Mr. Roosevelt, and have stated them on several occasions in our pages; but these objections are on the whole not so serious as those which apply against Baker or Ritchie, Garner, or Murray. If for nothing else, it would be hard not to feel somewhat drawn toward Roosevelt by the enemies he has made. All the most reactionary elements in American life, both within and without the Democratic party, have united in opposing him. The public utility interests in particular are charged, on good authority, with having gone to Chicago and poured out money (not necessarily through illegal acts) to obtain his defeat. All these gentry keep telling us over and over that Roosevelt is only a pseudo-progressive; but their actions show that they believe him to be a genuine one on several public questions, notably on the desperately important one of electric power, and they hate and fear him for that reason."

As might have been expected, Mr. Hearst's papers followed their favorite son, Speaker Garner, into the Roosevelt camp, presumably as part of the "deal" by which Mr. Garner was handed the vicepresidential nomination. Here is a passage from a typical Hearst editorial:

"Is Roosevelt a safe candidate?

This question echoes a similar inquiry which used to reverberate through Wall Street concerning the Democratic nominee's illustrious cousin.

"Before the query can be satisfactorily answered, one might counter 'safe' for whom?

"If Governor Franklin D. Roosevelt's conduct as President, if elected, squares with his past acts and expressions, he will not be altogether safe for heartless, heedless speculators and pyramiders and blue sky operators or for the greedy gangsters in the power industry who seek to appropriate to themselves public facilities.

"Governor Roosevelt's 'Forgotten Man' radio speech indicates that he will not be complacently safe for and in smug harmony with those who, like President Hoover, preach the doctrine of 'rugged individualism' to needy persons who are without employment, while practicing tender paternalism in the direction of financing the financiers. . . ."

Mr. Arthur Brisbane, Hearst editorial writer, and Mr. Merryle S. Rukeyser, Hearst financial writer, follow as usual the keynote of their employer. Mr. Brisbane on July 5th quotes Mr. Hearst's description of Governor Roosevelt as follows:

"He is not the hired man of high finance and that is the reason why high finance and its hired men will not support him. But it also is a good reason why genuine Democrats will support him."

Mr. Rukeyser quotes from various speeches of Governor Roosevelt, including his message on public utilities to the New York legislature, January 2, 1929, and concludes as follows:

"In view of the foregoing economic views, would Governor Roosevelt's election to the presidency be dangerous to business and finance? Not from my viewpoint, since I think that at this period of our history the soundest conservatism consists of an intelligent and informed liberalism."

UTILITY executives may or may not have been surprised to read in a United Service dispatch under the signature of Robert Barry in the Hearst papers on July 4th that the "Power Trust Girds for Bitter War to Defeat Roosevelt." Following this headline was one small paragraph in a double column story describing Governor Roosevelt's return to Albany following his nomination. The paragraph stated:

"Franklin D. Roosevelt returned tonight to his job as governor of New York.

"He carried with him the knowledge that the 'power trust' which has fought his policies in the Empire State is going to expand its activities to a bitter national battle against his election to the presidency on the Democratic ticket."

The conservative Philadelphia *Ledger* sees in Governor Roosevelt a real menace to the stability of business. An editorial in that paper stated:

"Mr. Roosevelt's invitation to Insurgent Republicans — 'nominal Republicans' he called them—to enlist under his banner brought prompt acceptance from Senator Norris, who will doubtless be followed by the march of other Insurgents into the Roosevelt camp, for that is where they belong. The gentleman from Nebraska, who is a Republican only when he is up for reëlection, was for Mr. Smith in 1928. But Mr. Roosevelt will make a far stronger appeal to his enthusiastic support. Mr. Norris, if he is permitted, will take charge of the 'antipower trust' department of the campaign."

—F. X. W.

EDITORIAL. *The Financial World.* July 13, 1932.

FACTS AND FANCIES. By Floyd W. Parsons. *Gas Age-Record.* July 12, 1932.

EDITORIAL. *Wall Street Journal.* July 6, 1932.

FINANCIAL MARKETS. New York *Times.* July 6, 1932.

EDITORIAL. *The Nation.* July 6, 1932.

EDITORIAL. *The New Republic.* July 13, 1932.

EDITORIAL. Washington (D. C.) *Herald.* July 5, 1932.

TODAY. By Arthur B. Brisbane. Washington (D. C.) *Herald.* July 5, 1932.

ROOSEVELT SHOWS PROGRESSIVE LEANINGS. By Merryle S. Rukeyser. Washington (D. C.) *Herald.* July 5, 1932.

POWER TRUST GIRDS FOR BITTER WAR ON ROOSEVELT. By Robert Barry. Washington (D. C.) *Herald.* July 4, 1932.

EDITORIAL. *Philadelphia Ledger.* July 4, 1932.

How Will the Presidential Campaign Affect the Utility Industry?

PLANK No. 10 of the Democratic platform contains the following passage concerning the utilities:

"Protection of the investing public by requiring to be filed with the government and carried in advertisements of all offerings of foreign and domestic stocks and bonds true information as to bonuses, commissions, principal invested and interests of sellers. Regulation to the full extent of Federal power of:

"(a) Holding companies which sell securities in interstate commerce.

"(b) Rates of utility companies operating across state lines.

"(c) Exchanges trading in securities and commodities."

Does this mean that Governor Roosevelt is going to devote most or a considerable portion of his campaign to the so-called "power issue?" Does the Democratic platform in its entirety indicate that that party has been converted to a policy of radicalism?

So far Senator Norris (R.) of Nebraska and the Hearst newspapers seem

to be the only particularly articulate prognosticators who think that the power issue will be "THE" issue in the coming political campaign. Senator Norris is quoted as follows:

> "I think the important issues are economic.
>
> "Probably the largest combination ever organized against the progressive program, that I think Governor Roosevelt stands for, is the 'Power Trust.'
>
> "Governor Roosevelt refused to surrender his principles even for the presidency. He could have been nominated on the first ballot at Chicago if he had surrendered his convictions on this one issue."

Senator Hull (D.) of Tennessee seems to think that the campaign will turn chiefly on economic controversies but does not indicate that he believes that the "power issue" will by any means take the spotlight. Senator Hull stated:

> "Economic problems will be of outstanding importance this year and for some time to come.
>
> "The forces supporting Roosevelt will offer basic remedies for the restoration of confidence, of commodity prices and the international financial, credit and trade structure, so as to rebuild the once vast trade among nations."

DAVID Lawrence, a veteran political observer, is skeptical as to the genuine purpose of either platform. Writing his weekly letter to the subscribers of The Bureau of National Affairs he stated:

> "But penetrating beneath the surface we saw the hand of conservatism. The two party platforms, more than in any other campaign, were designed and were written to catch votes. Neither presents a legislative program."

Mr. Lawrence's opinion seems to be shared by *The Financial World* which, in an editorial of July 6, 1932, stated:

> "With the campaign platforms of both of the major political parties now formulated, the country is gratified by the assurance that neither includes such inimical proposals as tinkering with the monetary system or other schemes which would throw up additional barriers to economic recovery. General business has little if anything to fear no matter which way the majority casts its ballots in November."

Surprising as it may seem, the *Financial World's* opinion does not appear to differ greatly from that of the progressive weekly, *The Nation*, which contained the following summary of both platforms:

> "On many questions the two platforms are hardly distinguishable. Both favor our entrance into the World Court; both give vague support to armament reduction; both wish the farmer well, and favor 'coöperation.' About all the Republicans have to offer the farmer in addition to this is more 'tariff protection,' while the Democrats vaguely urge 'effective control of crop surpluses.' Both parties, of course, favor government 'economy,' though the Democrats are slightly more specific here in calling for 'a saving of not less than 25 per cent in the cost of the Federal government,' and in hinting that 'generosity' to war veterans should be limited to those who have 'suffered disability or disease caused by or resulting from actual service in time of war.' The Democrats show concern for the regulation of holding companies, the Federal control of utilities, and the correction of stock-market abuses, where the Republicans are practically silent. Finally, though both parties are cagy in indicating the amount of unemployment relief they would favor, the Democrats have placed themselves on record as favoring 'unemployment and old-age insurance, under state laws.' This is an admirable step forward which has attracted less attention than it deserves. The Democrats are to be congratulated on having said more in 1,400 words than the Republicans in 9,000."

SUMMARIZING the prevailing views, it seems to be the consensus of opinion that the more pressing economic problems such as unemployment, business recovery, foreign debts, and policies, will take the spotlight away from the "power issue," which, as Al Smith once said, is pretty difficult to "get anywhere with."

—M. M.

LEADERS SEE MAJOR ISSUES AS ECONOMIC. Washington (D. C.) *Herald*. July 8, 1932.

DAVID LAWRENCE'S WEEKLY. The Bureau of National Affairs. July 2, 1932.

EDITORIAL. *The Financial World*. July 6, 1932.

THE TWO PLATFORMS. *The Nation*. July 13, 1932.

The March of Events

Government Control of Holding Companies Is Advocated

THE Federal Power Commission, according to newspaper dispatches, urges in a report to Congress that legislation be enacted to put utility holding companies under government control. Such control, in the opinion of the Commission, to be adequate would include in its scope service organizations of holding companies, with supervision of all contracts between them and their operating companies, and regulation of accounts, with requirements providing specifically for the filing of financial and other reports on prescribed forms with full publicity and supervision of security issues.

The Commission makes no specific recommendations for legislation but calls attention to the pending investigation by the House Committee on interstate and foreign commerce into the ownership and control of all public utility corporations other than railroads and states that in deference thereto it will await the result of that inquiry before submitting definite recommendations.

Validity of Power Act Is Challenged

THE constitutionality of the Federal Water Power Act, if it is construed as giving the Federal Power Commission control over projects on nonnavigable streams, has been attacked by counsel for the Appalachian Electric Power Company in a suit in which the company is seeking an order from Federal Judge Luther B. Way for the eastern district of Virginia to prevent members of the Commission from interfering with the proposed construction and operation of a power project on the New river in Pulaski county, Virginia.

Judge Way last month heard arguments by attorneys for the Power Commission and the power company in the case, which has attracted nation-wide attention because of the questions of state's rights and the power of the Federal Power Commission.

Newton D. Baker, Secretary of War in President Wilson's cabinet, appeared as counsel for the company, and Huston Thompson, special assistant to the Attorney General of the United States, presented most of the arguments for the Power Commission. The case was argued on a motion by the members of the Power Commission to dismiss the bill in the power company's suit. This motion was denied.

The project is expected to cost a total of $10,000,000, of which approximately $1,500,000 already has been spent, it is reported.

St. Lawrence Waterway Treaty

POWER development on the St. Lawrence river was brought a step nearer last month with the signing of the treaty between the United States and the Dominion of Canada providing for a deep-sea channel from the Atlantic ocean through the St. Lawrence to the Great Lakes. The treaty provides for a division of water for power purposes in the 48-mile International Rapids section equally between Canada and the United States. The total cost from the Great Lakes to Montreal is estimated at $543,429,000. Part of the cost has already been met by both countries. Actual costs to the two governments will be reduced by payments by state and provincial governments for power.

The Senate before adjourning approved an investigation by its Foreign Relations Committee of the waterway treaty.

A press dispatch from Ottawa states that the Quebec attorney general's department is preparing for a legal fight to block the waterway project. Senator Lewis of Illinois is reported to have called on President Hoover to lodge a protest by the city of Chicago and the state of Illinois against the treaty. This was based largely upon the objection that the treaty includes a limitation on the diversion of water from Lake Michigan.

New Valuation Recommendations Made in O'Fallon Case

A REVISED valuation of the St. Louis & O'Fallon Railway is set up in a proposed report submitted on July 28th to the Interstate Commerce Commission by Examiner P. A. Conway The report determines values for rate-making purposes of the O'Fallon road and the Manufacturers Railway during the period March 1 to December 31, 1920, and the calendar years 1921 to 1927, inclusive, as well as the net railway operating income for those periods.

The O'Fallon road was found to have earned excess net operating income of $590,549, of which $295,274 is recapturable by the

government. No excess earnings were found for the Manufacturers Railway.

The Commission filed its report and order in 1927, in which it found excess earnings had been received by the O'Fallon during the 1920 period and the calendar years 1921 to 1923, and that none had been received by the Manufacturers Railway. Suit was instituted in the Federal court to enjoin the order as illegal. The district court sustained the order with a slight modification relating to interest on recapturable excess earnings. On appeal to the Supreme Court the judgment of the lower court was reversed and the Commission order annulled. The case was then reopened and the scope of the proceedings was extended to include the calendar years 1924 to 1927, inclusive. Concerning the recent report, the *United States Daily* says:

"The proposed report by Examiner Conway recommends that the Commission approve the Bureau of Valuation's estimates or original cost, which he explains has been determined by adding to known actual costs estimates of the original cost of other road property, except land, based on its estimated cost of reproduction new at the 1910–1914 level of prices plus excess costs of additions and betterments installed between July 1, 1914, and the primary valuation date over the costs of reproduction new of such property at 1914 prices.

"In determining the cost of reproduction new, the report recommends the use of 'period prices' and rejects the contention of counsel for the O'Fallon that 'spot prices' should be used in arriving at the 1920 valuation.

"The report states that evidence presented by respondents does not warrant a reversal of the Commission's previous finding that the O'Fallon and Manufacturers do not constitute a single system within the meaning of Par. (6) of § 15a, and it is recommended that the Commission affirm its former conclusion."

Railroad Merger Plan Approved

For many years the railroads have been considering consolidation with the ultimate view of a few strong trunk-line systems to take care of the country's transportation. Governmental encouragement of this idea was found in the Transportation Act of 1920, which required the Interstate Commerce Commission to plan a consolidation of carriers into a limited number of systems so that competition would be preserved and existing routes and channels of trade maintained.

A plan for consolidation of the roads into 22 systems was advanced by the Commission in 1921. The Van Sweringen interests in 1924 proposed a major consolidation of the Chesapeake & Ohio, Erie, Nickel Plate, and Pere Marquette. This proposal was rejected by the Commission. Another plan was suggested by the Commission in 1929, but this was not carried out.

Last year the Pennsylvania, New York Central, Baltimore & Ohio, and Chesapeake & Ohio submitted a new proposal for dividing the eastern territory into four systems. This plan has now been approved by the Commission with certain modifications. For the eastern territory covered, one of the differences between this plan and that proposed earlier by the Commission is the dropping of a fifth eastern system to be composed of the Wabash, the Seaboard Airline, and several small lines. Both the Wabash and the Seaboard are in receivership.

To carry out the ideal of competition it is proposed that there shall be competition between systems rather than between individual lines. The large cities will have service in most all instances from at least two systems.

The Commission has now approved the combination of some roads which formerly it vigorously disapproved. For example, the Pennsylvania held an interest in the Wabash, and the Baltimore & Ohio held an interest in Western Maryland, both of which holdings were viewed by the Commission as being in violation of the Antitrust Law. These combinations are now approved. Commissioner Joseph B. Eastman strongly disapproved the plan in a dissenting opinion.

The Pennsylvania Railroad has been buying into the New England roads, and the Commission has decreed that it would approve no merger application from the Pennsylvania until it has either divested itself of all stock in the New Haven and the Boston & Maine or has placed all such stock in the hands of independent trustees approved by the Commission.

District of Columbia

Absorption of Power Tax

The effort of the public utilities commission to have the Potomac Electric Power Company absorb the 3 per cent tax on electricity imposed by the new revenue act was to be deferred until after a decision by Justice Oscar R. Luhring of the District Supreme

Court on the commission order reducing rates under the sliding-scale system, according to a report in the Washington *Star*, which states:

"The commission has broached the subject to the power company, but has not asked for any reply pending a study of the matter by Assistant Corporation Counsel William A. Roberts.

"Mr. Roberts said today it was a constitutional impossibility for the commission to issue an order to the company to absorb the tax since the commission is not a taxing body and the taxing power is reserved in the Constitution to Congress. He said the same result might be achieved by an order putting into effect a sufficient reduction in rates to absorb the tax without mentioning the tax.

"To do this, however, Mr. Roberts said, at this time would be to jeopardize the commission's chances of winning its case in court. Any order on rates at this time would rescind all previous rate orders and effect the dismissal of the case in court and litigation would have to start all over again.

"The present case was submitted to the court in April, but no decision has yet been handed down. It is in the form of an appeal by the power company from an order of the commission revoking the old consent decree by which rates were adjusted from 1924 to 1931 and setting up a new sliding-scale system for annual rate adjustment.

"It is estimated that if the court holds with the commission the rate reduction ensuing would take up more than twice of the amount expected to be received by the tax.

"Since the tax does not enter into the operating revenues of the company, the tax would have no effect on the sliding scale. The company acts, in effect, as agent for the Internal Revenue Bureau in collecting the tax and then hands it over to the Revenue Bureau so the amount collected and disbursed does not either increase or decrease the company's operating expenses or revenues.

"The electric rates in effect today were put into effect by a stipulation entered into between the commission and the company while the present case was pending, and were calculated to split the difference between the reduction possible under the old consent decree and the greater reduction under the commission's sliding scale."

Index Figures Submitted to Adjust Phone Rate Base

THE District commission has been receiving evidence on values and earnings of the Chesapeake & Potomac Telephone Company in a proceeding to determine whether a rate reduction should be ordered. The cost of reproducing the properties, as of December 31, 1931, was placed at $31,382,104 by Thomas R. Tate, engineer of the commission. This figure was found by taking the valuation as of December 31, 1924, applying to the various items index figures to bring the cost up to December 31, 1931, and adding the book cost of net additions and betterments between these dates. Charts and sets of figures showing the rise and fall of index prices from 1924 to date were introduced. The Washington *Star* states:

"Most of the charts show their peak in 1929 with declines since. The charts used the year 1926 as a norm, each index for that year being 100 per cent. Most of the charts show a peak in 1929 and more or less steady decreases since. There were some exceptions, however.

"Conduit reached its peak in 1930 and is still 16 points higher than the 1926 figure. Central office equipment showed increases in 1930, '31, and '32 over the 1929 figure. Station equipment rose 5 points in 1932 over 1931.

"As to central office equipment, Mr. Tate testified that this was bought from the Western Electric Company and that the contracts for it were not let to open bidding but given exclusively to the Western Electric. He said he knew of no other industry where the trend of 1931–32 prices on equipment was up.

"The index figures also showed an upward trend in labor costs recently. Mr. Tate ascribed this to decreased construction work. He said the telephone company has a policy of retaining its men without cutting their wages and that a decrease in construction work would mean that less casual laborers were hired for short periods and consequently the higher wages paid to their permanent employees would show up more in the composite wage figures."

People's Counsel Richmond B. Keech at one of the hearings filed a memorandum urging an immediate valuation of the properties. He said that the hearings in progress had shown the necessity for a valuation and that the present economic condition would enable the commission to obtain the services of experts not available in normal times at figures substantially less than those usually demanded by such men. There has been no valuation of the properties since 1917, he pointed out, as the revaluation of 1925 was abrogated by a consent decree of the District Supreme Court on October 1, 1927. William A. Roberts, special counsel of the commission, introduced evidence that the properties could be reproduced for almost $23,000,000, according to the Washington *Post*.

A difference of $9,000,000 developed between the claims of the commission and the company as to what should be considered the rate base of the properties. The company claimed that the commission had no right to deduct depreciation since this is a matter reserved to the Interstate Commerce

Commission. Mr. Tate said that between 6½ and 8½ million dollars should be deducted for depreciation, with an extra half million dollar deduction for property used wholly in interstate commerce. The company has claimed a book cost of $31,990,000.

Illinois

Gateway Gas Hearings Reach Final Stage

ARGUMENTS were heard by the commerce commission last month on gateway rates for natural gas proposed by the Panhandle Illinois Pipe Line Company. Lengthy hearings have been conducted by the commission concerning wholesale rates.

Attorney John Chadwell, for the company, explained that the case affected only the gateway rate or the rate which the company would charge the distributing companies at the city limits of cities to be served with natural gas. He stressed the fact that the company had furnished all figures and estimates asked both by the municipalities and the commission. Quoting from the Springfield *State-Register:*

"The municipalities, he stated, have accepted the company's figures as to cost of the line from Texas to Illinois, except for two items, $800,000 for financing and $4,000,000 for going value. The company's total figure of cost is $43,520,000 while the cities claim the figure should be $37,500,000.

"Even admitting that the cities are correct, he argued, the rates proposed by the company will not earn the company an unreasonable return, he declared."

Experimental Revision of Therm Rates Recommended

A RESOLUTION authorizing the corporation counsel to appear before the commerce commission and, on behalf of the city of Danville, waive the customary ten days' notice for the purpose of making effective immediately temporary, experimental changes in rates and the character of gas furnished consumers in Danville and vicinity has been adopted by the Danville city commissioners, according to the Danville *Commercial News,* which adds:

"A new temporary schedule, which, according to Harry Payne, division manager of the Illinois Power & Light Corporation, will effect a saving of between five and six per cent to the small consumer of gas, makes a reduction from 24 cents per therm for the first 15 therms to 22½ cents for the first 30 therms.

"The gas will be enriched from 800 heat units per cubic foot to 1,000 units if the commission sanctions the change. At the same time the pressure on the mains will be reduced about 25 per cent.

"The proposed temporary, experimental schedule will have no effect on any hearing pending before the commission now, or any that may come up in the future regarding rates for gas, it was stated, this rate being merely experimental and subject to whatever action the commission may later take in the matter.

"Mr. Payne told the commissioners that when gas stoves were overhauled last February by the company and adapted to the new gas, they were adjusted to consume gas containing 1,000 British thermal units per cubic foot, but only 800 heat units per cubic foot has been used, the pressure being increased sufficiently to provide sufficient heating capacity. The increase of 200 more heat units per cubic foot will permit lowering the pressure to where it was before natural gas was used in the mixture produced by the company. No changes in gas fixtures will be necessary if the change is made, he said, except in a few cases. While a richer mixture will be provided, the lower pressure will compensate for it.

"Mr. Payne also said that the ordinary user of domestic gas seldom consumes above the first 15 therms, by which gas is measured, and usually if he does consume more than 15 therms per month he has a gas heater or other appliances, which gives him the combination rate, which is also lowered in the proposed schedule.

"The rate for the large user of gas is also lowered. Mr. Payne stating that the company is seeking to supply new customers who will use gas for heating purposes and thus compensate them for the decrease in rates."

Indiana

Injunction against Telephone Rates Is Recommended

THE Southern Indiana Telephone & Telegraph Company has secured a recommendation by Samuel Dowden, special master in chancery of the Federal court at Indianapolis, that an injunction be issued to restrain enforcement of rates ordered by the public service commission on October 21, 1930. The Greensburg *News* informs us:

"The special master reported that the utility's twenty-nine exchanges have a fair valuation of $1,000,000, from which the company is entitled to earn 7 per cent. Dowden found that the rates ordered by the commission were confiscatory of the company's property.

"The utility had asked a valuation of $1,308,571.37. Harry V. Wenger, chief engineer of the commission, testified to a reproduction value depreciated to $844,260. Contention of the commission that each of the twenty-nine communities affected should have values established on property within the municipal units was rejected by the master, it being his finding that the telephone exchange area instead of the municipality is the unit for rate valuations.

"Dowden also held that affairs of the company, in regard to unusual allowance for operating expenses, have been rectified since the retirement of former executives of the company, including L. C. Griffitts, of Seymour, former president. Dowden reported he was unable to find any injury to telephone subscribers having grown out of arrangements by which former officials of the company formed a realty concern which rented exchange buildings to the utility."

Utility Legislation Proposed

A BILL has been introduced at the special session of the legislature to permit municipalities to acquire public utility plants to be paid for solely out of earnings. Rates would be fixed by the commission. Another bill provides that valuations of public utilities for rate-making purposes shall not exceed the assessed valuation for taxing purposes.

A bill has also been introduced in the House which would impose a license fee of $5 a year on each public utility and a tax of 6½ per cent of the gross income. Another measure proposes a levy of 5 mills per ton-mile on licensed busses and trucks.

A bill has been introduced in the Senate on behalf of the Municipal Rights League of Indiana to give to cities and towns the right to construct, own, and operate public utility systems without the jurisdiction of the commission. This measure would restore to municipalities the rights and powers formerly held and which have been transferred to the commission. Cities and towns would have the right to finance utility projects by the issuance of municipal or revenue bonds, and a majority of the voters in any municipality would be authorized to decide whether public utility property should be acquired.

Kansas

Commission Jurisdiction over Teletype Service Questioned

THE Kansas Public Service Commission on July 26th started an investigation of telephone rates. It first sought to ascertain whether it had jurisdiction over rates charged by the American Telephone and Telegraph Company to the Associated Press, which has a contract with a number of Kansas papers to furnish wire service by teletype. The hearings were ordered when the papers complained about the rates, and several newspaper publishers were appointed a committee to take up the matter.

The Southwestern Bell Telephone Company, through its attorneys, filed an answer in which it denied the jurisdiction of the commission to go into the matter since the teletype rates are fixed in a national contract made between the American Telephone and Telegraph Company and the Associated Press. They contend this is a contract with which the Southwestern Bell has no concern. The Kansas City *Journal-Post* reports:

"Attorneys for the Southwestern Company insisted that the Southwestern Company is not properly the defendant, nor are the complaining newspapers proper complainants, and that the commission is consequently confronted with a case in which it is seeking to determine the reasonableness of the rates by the American Telephone and Telegraph Company to the Associated Press pursuant to a private contract between these parties without having either of the parties before the commission. It was contended that the rates in question are not subject to regulation because the service is not a public utility.

"Information was presented in an attempt to establish the fact that the Associated Press gathers and disseminates news to hundreds of newspapers in the United States and that under a private contract it has a nation-wide or complete interstate hookup over the wires of the American Telephone and Telegraph Company, and other companies. The contract, the attorneys contended, was not made by the Southwestern Bell Telephone Company, and that it has never been a party to the contract and is not a party now.

"It was pointed out that Kansas newspapers which asked the commission to make the investigation are, along with hundreds of other newspapers through the country, members of the Associated Press, and that the members have a contract with the Associated Press for teletypewriter service for them from the American Telephone and Telegraph Company, and that the Associated Press has a private contract in turn with the American Telephone and Telegraph Company for this service. It was declared that teletypewriter news service is set up particularly for newspapers and was established necessarily on a nation-wide scope so that newspapers throughout the country could be served.

"The answer, in discussing the inquiry into so-called miscellaneous charges and exchange rates, pointed out that the commission, from its own investigation of the company's books, and from other complete information furnished by the company, should know that the company is not now earning a fair return in Kansas and should not push the proceeding into a general fruitless and burdensome investigation, the cost of which would ultimately fall upon the consumer."

Kentucky

Heat Unit Basis for Gas Rates Is Recommended

A SLIDING scale of gas rates, varying in direct proportion to the heat value, has been recommended in a memorandum on the proposed Louisville gas franchise submitted by E. R. Weaver, chemist of the United States Bureau of Standards, to Mayor Harrison. He pointed out that the consumer is paying for heat units and, if these can be increased, it will be no disadvantage to the customer to pay for such gas at a proportionally higher rate. Such an arrangement, he said, encourages the utility to seek the most economical method of supply, which in the long run will result in the greatest economy to the city. The Louisville *Times* states:

"Mr. Weaver did not pass on the proposed rates, having given them no study. He approved permitting a variation of 4 per cent in heating value and doubted the desirability of restricting the company to the use of 285 B.T.U. water gas. 'It might lead to increased costs,' he said, 'or to difficulty in meeting peak loads without benefiting the consumers. It would be especially unfortunate to prevent the use of butane or other hydrocarbon vapors and oil gas.

"The company's proposed heating value of 900 B.T.U., he said, is about 9 per cent less than the average heating value of the gas now sent out during the year. He would expect this to increase consumption by 7 per cent. Mr. Weaver expressed regret that he lacked the time to go over in detail the data on which the company arrived at 900 B.T.U. as the most economical mixture, but 'I am inclined to believe that this heating value might be revised upward somewhat. The result to be sought is the delivery of gas throughout the year at the lowest cost per B.T.U. because this will result in the lowest rate to the public consistent with a fair return to the utility.'

"In order to protect the interest of consumers, Mr. Weaver said that the franchise need only stipulate a uniform supply, adequate in amount at the lowest possible cost per heat unit. He expressed the belief that the proposed change to a constant supply of mixed gas is desirable because it will result in the most satisfactory utilization of most of the appliances in service."

Proposed rates for domestic electricity being drafted into a tentative franchise for submission to the board of aldermen were 24.5 per cent lower than average rates per 100 kilowatt hours per month in 190 cities, a report of the Public Utilities Bureau showed. A new rate of 5 cents per kilowatt proposed by Mayor Harrison in negotiations with the Louisville Gas & Electric Company was also 3.5 per cent lower than the average charged by thirteen cities having municipal electric plants, the report set out. Quoting from the *Times:*

"The schedule used for existing rates is the 'room rate' schedule the company voluntarily put into effect and which is not obligatory under the existing franchise, which fixes the maximum rate at 7.6 cents per kilowatt per month.

"All cities having a population over 50,000 in the 1930 census were included in the survey and the monthly charges were figured on the average uses in a 7-room house.

"The proposed rates have been submitted to officials of the company and were met with counter proposals for rates higher than those offered by Mayor Harrison."

Injunction Granted against Gas Rates at Lexington

A DECISION by three Federal judges holds that 50 cents a thousand cubic feet is a fair rate for gas served by the Central Kentucky Natural Gas Company at Lexington. Lexington consumers have been paying 60 cents since November, 1927, of which 10 cents has been impounded. The proceedings was started to restrain enforcement of a 45-cent rate fixed by the commission. The Lexington *Leader* states:

"Under today's decision, if it stands, the supreme court test which attorneys for the Central Kentucky Natural Gas Company will probably seek, all money that has gone into the impounded fund since the 60-cent rate went into effect would be distributed among the consumers. This amounts to approximately $676,527.

"However, the money impounded between January, 1926, and November, 1927, when only 50 cents was being collected, would go to the gas company. This amounts to about $132,945.

"In other words, since the court held 50 cents to be a fair rate, all impounded money representing a collection of more than that amount would be returned to the consumers, while the company would get the rest. The jump from 50 to 60 cents was made while the case was pending before the railroad commission, and was in accordance with the terms of the franchise contract of January 28, 1927, which provided for the increase upon completion of a new pipe line. . . . The litigation has been under way, in one form or another, since September, 1925, when the old 40-cent franchise expired. Impoundment began in January, 1926, under order of the Fayette circuit court. The new franchise contract was signed in January, 1927, and the case went to the railroad commission February 1, 1927. Its decision fixing a 45-cent rate was handed down October 9, 1929, and within a few days attorneys for the gas company went to Federal court in an attempt to enjoin it."

The gas company, after the rendering of the decision, filed a petition for modification, charging that the 50-cent rate was based upon an erroneous calculation and that the figures should have been 55.34 cents. It was charged that the court failed to take notice of extra cost of gas bought from Petroleum Exploration. This, it was said, represented a deficiency of $62,794 in calculating a fair return on the company's investment.

Injunction Sought against Sale of City Light Bonds

SUIT has been filed by the Kentucky Utilities Company against the city of Paris asking a temporary injunction to prevent the city from selling and delivering $150,000 in electric light bonds with which a municipal electric plant is being built in the city. The Lexington *Herald* reports:

"The petition alleged that no provision had been made for a tax levy on the payment of interest and principal of the bonds; that by reason of the $400,000 bond issue floated to pay for the water system here, with another bonded indebtedness totaling $168,000, and a floating debt of $25,000, the city was exceeding its constitutional limit, and that the sum of $10,000 a year for forty years is insufficient to pay the interest on the $150,000 as it falls due, and to pay the principal amount of the bonds as they fall due as required by law."

The city has already awarded a contract for the complete construction of the new municipal electric light plant for about $145,000. The utility company's franchise ran out more than a year ago. A suit has also been pending to compel the city to offer for sale an electric light franchise.

Massachusetts

Commission Announces Rules for Public Utility Loans

THE commission has made public rules and regulations which it has compiled for the lending of money by gas and electric companies. This was pursuant to authorization by this year's legislature. The legislature provided that all such loans should receive the approval of the commission. The department's rules, as reported in the Boston *Evening Globe*, are as follows:

"Temporary loans of surplus funds may be made by a gas or electric company for periods not exceeding one year as follows:

"(1) To the United States of America and to the commonwealth of Massachusetts.

"(2) To national banks and to trust companies and savings banks incorporated under the laws of the commonwealth.

"(3) To municipalities in which such companies are engaged in the sale of gas or electricity in amounts not in excess of the amount of taxes assessed to such companies in such municipalities for the year pre-

ceding that in which such loans are made.

"(4) To an electric company engaged in the manufacture and distribution of electricity which, under the provisions of the General Laws, has stated in its agreement of association that it is organized for, or that thereafter its corporate purpose shall be, the generating and buying of electricity and the transmitting and selling of the same to two or more corporations of which the corporation so lending its funds is one.

"(5) To officers, agents, and employees of said companies in anticipation of their authorized expenses, not in excess of $1,000 to any such officer, agent, or employee; and to employees of said companies who are in need of financial assistance, not in excess of $500 to any such employee.

"(6) Promissory notes may be taken by a gas or electric company in settlement of an account due for gas or electricity sold or services furnished or in payment in whole or in part for property sold or conveyed."

Commission Hears Merchants' Complaint against Light Rates

THE Massachusetts commission has been considering complaints by Boston merchants for a reduction in lighting rates charged by the Edison Illuminating Company of Boston.

The merchants objected that the company was charging them rates higher than those charged to the smallest household user. Many of the merchants, according to Benjamin Stern, president of the Summerfield Company, as quoted in the Boston *Advertiser*, who now pay as high as $375 a month for electric lighting, cannot obtain the wholesale rate, although merchants who use double the amount of electricity and who are billed under the wholesale rate are required to pay but a small fraction more for the much greater amount of current used. The commission is asked to revise the rates.

Michigan

Saginaw Arbitration Case Transferred to Federal Court

JUDGE Clarence M. Browne, according to the Saginaw *News*, has signed an order transferring the appeal of the city of Saginaw from the city gas rate findings of the board of arbitrators to the Federal court at Bay City. The transfer was made on the filing of a petition and bond by Weadock & Weadock, attorneys for the Consumers Power Company and the board of arbitrators.

In signing the order, Judge Browne, according to the *News*, acted on a United States Supreme Court ruling which reads: "That upon the presentation of a proper petition for removal and a proper bond, the power of the state court over the case other than to enter the order of removal is at an end and any proceedings thereafter are nullity."

Coke Donation by Company Halts Rate Contest

THE Battle Creek Gas Company has halted an effort by the city of Battle Creek to secure a reduction in gas rates by donating 1,000 tons of coke to the city. The city commission accepted the company's gift. Quoting from the Battle Creek *Enquirer-News:*

"Lifting from $6,000 to $8,000 of the burden of providing fuel at public expense next winter, for charity, the gas company's gift will mean a considerable saving to taxpayers at large, Mayor Penty pointed out. The mayor said that the city was expecting to ask coal dealers to provide fuel this winter at cost or, at the most, a narrow margin of profit. If their coöperation is secured, the city's fuel bill under the unit system effective January 1st, will be kept at a most economical figure.

"In accepting the offer the city and the company agreed that the gas rate controversy was not to be considered settled, and Mr. Frazer [president of the gas company] said 'as soon as there is general economic recovery and conditions warrant, we will be glad to discuss with you further, the matter of revision of gas rates.'

"Discussing the gas company's gift members of the city commission, after the meeting, said that they felt the immediate good resulting from a gift of the kind would be greater than a cut in gas rates. The fuel will go to persons that need it, while the gas rate reduction would benefit most those best able to pay their bills. Indirectly the taxpayer at large will benefit from the decreased cost of administering poor relief when the city January 1st takes over the burden formerly carried by Calhoun county."

New Jersey

League Would Have Commission Abolished if Rates Not Reduced

A CAMPAIGN to effect reduced gas and electric rates has been outlined by the Public Utilities Consumers' League of New Jersey. The league, according to the Camden *Post*, has circulated petitions demanding that the legislature abolish the board of public utility commissioners if the board fails to force a gas and electric rate cut.

A statement by counsel for the organization announces that if necessary the league will hire engineering and legal talent to investigate the cost of Public Service Electric & Gas Company service. The league takes the position that the bulk of the company's expenses is replacement and that labor and raw material are down to rock bottom although there has been no reduction in rates.

New York

Street Lighting Contract Proposal Condemned

A CONTRACT which the New York Power and Light Corporation has submitted for street lights in Saratoga Springs has been condemned by a committee on the street lighting situation in a report to the city council. The committee recommended that the city proceed at once with plans for installing its own fixtures in a park. It was recommended that plans for city-owned equipment should also include the Broadway lighting system with single post staggered lamps. The committee offered as an alternative that the city agree at once with the company upon a purchase price for the present park equipment if a reasonable figure could be arrived at, both as to price and charge for current as now supplied.

The old contracts are based upon a flat rate for each lamp varying with candle power used, etc. The proposed contract is upon an entirely new basis, being made up of three parts, namely: (1) A fixture charge for the rental or use of each pole or standard with the attachments thereon, other than the lamp or bulb itself. This charge varies from $6 to $53 per fixture. (2) A facility charge for the use of the cable or other wiring leading to the poles or standards. (3) A lamp charge based on candle power covering the lamps themselves and the current used which charge varies from $8 to $61 per lamp. These three charges make the total rate.

A clause in the ornamental lighting contract of 1919, which ran for a period of five years, provided that in case the city did not at its expiration renew at the same rates and on the same conditions for an additional five years, the city obligated itself to pay the company the sum of $22,000 in cash, as a forfeit for such nonrenewal. The contract was renewed.

There is a provision in the proposed contract by which the city may increase the number of size of its lamps, but never decrease them without paying the power company. This clause the committee terms oppressive. A number of other special provisions in the contract are also considered unacceptable.

Buffalo Company Objects to Absorbing Federal Power Tax

ARGUMENTS against absorption by the Buffalo General Electric Company of the 3 per cent Federal tax on electricity were explained in a letter to the Buffalo *Times* by Horace L. Mann, president of the company. The newspaper advocated that the company relieve its customers of the tax.

The president of the company points out that the average monthly amount of the tax to Buffalo consumers will be 7 cents, less than the tax on two gallons of gasoline. Assumption of the tax by the company, he says, would place a serious burden upon it. His letter in part follows:

"Buffalo today pays considerably less for its electricity than the nation as a whole. The average cost of residential electricity for the United States in 1931 was 5.93 cents per kilowatt hour. For the same period in Buffalo it was 3.3 cents per kilowatt hour. This has an important bearing on the tax because the tax is based on the price paid by the consumer. On account of low electric rates here, Buffalo will pay considerably less tax per kilowatt hour than the vast majority of cities in the country. Our records show that over 50,000 or about 36 per cent of our residential customers will pay 4 cents or less tax per month and the average tax for all residential customers will amount to about 7 cents per month; less than the tax on two gallons of gasoline.

"Although this tax amounts to only a few cents per month to the average residential customer, the total tax which the government will receive for residential and commercial

customers will amount to more than $250,000 per year. In 1931 the Buffalo General Electric Company paid $1,247,673.41 in taxes to Federal, state, and municipal governments, amounting to about 23 per cent of its net income.

"State regulatory bodies do not guarantee the earnings of utility companies. They limit earnings to a reasonable return on the company's investment. Therefore, when prices are rising and many commercial enterprises are making large profits, the electric company, because its rates are regulated, cannot take advantage of rising prices but must hold to a fair return on its investment.

"Electricity has steadily decreased in price even during the period when almost everything else was increasing in price."

Wisconsin

Objections Filed against Rate Reductions

THE Wisconsin Telephone Company in a petition for permission to present its side of the so-called emergency rate situation, cites 46 reasons why the rate reduction order is "unreasonable and unlawful, confiscatory and unconstitutional." The application lists 19 "errors of fact and numerous erroneous conclusions" based on these errors of fact and embodied in the commission's order.

Quoting from the *United States Daily:*

"Among the 46 reasons listed in the application as to why the company should be given a hearing are:

"1. No hearing was given the company before the order reducing rates was issued. Furthermore, the company had no official knowledge that the commission was considering the issuance of an order.

"2. Only the commission's version of conditions have been given to the public. The commission, through its paid publicity representative, emphasized only that portion of the commission's testimony which the company considers politically prejudicial. As a result erroneous impressions have been received by the newspaper-reading public.

"3. Rates for telephone service have never been based on the fluctuating costs of living. They have always been based on a reasonable return upon the property used and useful in providing dependable telephone service to the public.

"4. At the present time the company is earning less than 3½ per cent on its average plant equipment. It is, therefore, carrying more than its share of depression load. The reduction of 12½ per cent as contemplated by the commission would reduce the return on investment to less than 2 per cent.

"5. The return of less than 2 per cent which the company would earn under the rate reduction contemplated would impair the credit of the company and would confiscate its property.

"6. The downward revision of rates contemplated will not improve business conditions nor will it alleviate hardships now being met by many people, but such contemplated reduction in rates will work irreparable harm to the company.

"7. No evidence is submitted in the commission's order to prove that the service rendered by the telephone company is not worth at least the amount of the rates now being charged.

"8. Reducing rates as contemplated by the commission would reduce returns to investors to less than the legal rate of interest. Merely the announcement of such contemplated reduction has already caused injury to the credit of the company, as was evidenced by the drop in open market quotations."

The company alleges that the commission has disregarded the fact that telephone service has been materially improved in quality and in number of subscribers that can be reached by telephone from any place, and that the commission has disregarded the fact that telephone rates as compared with 1913 have increased less than the increase in weekly wages and that telephone rates now have only approximately the same amount of increase over the 1913 basis as the cost of living.

It is charged that the commission has assumed that the revenues received by the company have increased in purchasing power, but it has disregarded the fact that the increased taxes which the company is being compelled to pay have more than eaten up the purchasing power of such revenues. The commission is charged with unwarrantedly intimating that preventive maintenance of property and equipment for the protection of the service to the public has not improved service, and with erroneously stating that the company has an excessive reserve for depreciation as to certain classes of property.

The company declares that the commission accepts the so-called economic testimony of witnesses called in by the commission, whereas aside from its immateriality such testimony represents only a theory of particular witnesses and fails to take account of additional facts which the company has had no opportunity to present, nor did the company have the opportunity to present economists who believe that reflation is more necessary today than deflation.

The Latest Utility Rulings

Federal Power Commission Announces Important Valuation Ruling

THE Federal Power Commission has handed down an opinion in the largest and probably the most important case which it has yet passed upon. The commission fixed $6,173,576 as the original cost of the Mitchell Dam of the Alabama Power Company which was completed nine years ago under a license granted in 1921 under the Federal Water Power Act. The dam was placed in commercial operation in August, 1923. In 1930 the licensee filed an itemized statement of the costs of the original project, claiming $10,646,056. The greater part of the claimed costs disallowed consists of $3,423,864 out of $3,500,000 alleged by the company to have been the legitimate cost of lands, water rights, and franchises used in the project. The commission also disallowed a claim of $183,540 representing a 3 per cent profit computed upon a direct and overhead cost of the Dixie Construction Company, a subsidiary of the licensee. An item of interest during construction which is being calculated upon an agreed basis of rate and method is to be added to the allowance for legitimate original cost. The opinion represents the unanimous judgment of four members of the commission, although Commissioner McNinch wrote a separate opinion in which he concurred with the main opinion but dissented on one point relative to an allowance for organization expense. Commissioner Garsaud did not participate because of the fact that his term had expired before the matter came on for consideration. *Re Alabama Power Co.*

Holding Company Criticized in Kansas Rate Reduction

CONDEMNATION of the practice of utility holding companies in taking "the cream from the gross earnings of the operating companies" was delivered by the Kansas Public Service Commission in ordering a 25 per cent reduction in natural gas rates collected at the gates of 100 cities by the Cities Service Gas Company. The commission prepared a formal order reducing the rates charged by the pipe line company from 39.5 cents a thousand cubic feet to 29.5 cents. Attorneys for the company indicated that the reduction would be resisted in the courts. About 100,000 customers are served in the cities affected. Seven per cent was held by the commission to be the maximum rate of return used in determining the reasonableness of the gate rate contract. If the gate rate were reduced to 29.5 cents, it was held, the company would "still be making in excess of a fair rate of return of 7 per cent on the average value of the property." The opinion also suggested that the holding company involved was more interested in selling securities and protecting security investments than in operating the companies for the benefit of the rate-paying public. Chairman Greenleaf, of the commission, dissented from his colleagues, Commissioners Hill and Campbell, and took the position that a 32-cent rate would be "fair and reasonable." *Re Cities Service Gas Co.*

A Statewide Rate Cut Ordered in North Carolina

THE public utilities of North Carolina have been ordered by the corporation commission of that state to appear on dates yet to be specified for the purpose of conferring with a view to effecting such immediate reductions in rates as may be legitimately possible under present conditions. The commission's order came as a result of a survey which it had made of the utilities under its jurisdiction. The commission claimed that it made its preliminary investigation as the result of numerous demands for rate adjustments in view of the current economic depression. The commission undertook its investigation with the expectancy of saving the state considerable amounts appropriated by legislatures of other states to special commissions to investigate utilities, which investigations have in numerous instances proven futile or became obsolete before being completed owing to the rapid changes in conditions. The North Carolina commission seeks to avoid such expensive procedure by following a policy of negotiation with the utilities. The commission's opinion stated:

"The public should remember that when individuals and corporations were making fabulous profits during the period of the war and as late as 1929, the public utilities were limited to their same fair return on the invested capital; we were not permitted by law to give them rates that would produce any more. The growth in public utility revenue in this state after the World War resulted from growth in business by expansion into new territory and building by industry and not from increase in rates.

"Public utilities, under the law, are entitled to charge just and reasonable rates for service which they render to the public. Under our regulatory law and rules made thereunder, the method by which these just and reasonable rates shall be ascertained is prescribed.

"The commission believes that adjustments, commensurate with a fair return upon a fair value of the used and useful property devoted to the public service, should be made in rate schedules from time to time. Rate controversies are expensive and are usually subjected to great delays. It is desirable that adjustments be accomplished without delay or expensive procedure, and it is thought that this can be accomplished best by negotiation and the readjustment of rate schedules where possible."

Accordingly, all telephone, gas, and electrical utilities in North Carolina were ordered to cause their accredited representatives to meet with the commission. *Re Utilities Operating in North Carolina.*

A Six Per Cent Return Is Held Reasonable for Indiana Water Company

AN emergency rate reduction by the Indiana commission of the Indianapolis Water Company has been permitted to go into effect by the United States District Court composed of three judges in a recent opinion denying an application by the water company for an injunction to restrain the commission's order. It was estimated that the order would produce an annual return of approximately 6 per cent, which the court held was not confiscatory. Circuit Justice E. A. Evans rendering the opinion of the court conceded that there was a distinction between an unreasonable rate and a confiscatory rate but was of the further opinion that the 6 per cent return was not confiscatory, however, it might be regarded as judged by standards of reasonableness. The commission's rate reduction was only temporary and came as a result of the economic depression. The order reduced the monthly minimum charge from $1.50 to $1.08, and cut approximately $65,000 a year from the rates for water hydrant rentals. The commission fixed a value of $21,250,000 which was based in part upon the $19,000,000 valuation which the Supreme

Court of the United States fixed on the company's property in a rate case in 1925. The company contended for a valuation of $25,000,000. *Indianapolis Water Co. v. Public Service Commission.*

No Retrial in the Wisconsin Emergency Telephone Rate Case

THE Wisconsin commission has denied a motion of the Wisconsin Telephone Company for a rehearing on its recent order establishing an emergency rate reduction of 12½ per cent which has previously been mentioned in these pages. In its opinion denying the motion, the commission answered two of the company's contentions. With respect to the rate of return allowed, the commission pointed out that it had made no finding of value and, therefore, had not expressed the rate of return in terms of a percentage on any valuation. The commission quoted authorities to the effect that in temporary emergency rate adjustment no finding of value or specific finding of a return percentage is necessary during the interim covered by the order.

With respect to book value, the commission quoted Supreme Court decisions to the effect that book value is not a fair value for rate-making purposes. Because of the fact that the company's property was constructed mostly in a period of high prices during the World War or shortly after, the commission was of the opinion that if the rule in the McCardle Case was strictly applied the present fair value of the company's property would be less than the book value thereof. *Re Wisconsin Telephone Co.*

Depression Will Not Excuse Delay of Power Project

ALTHOUGH the economic depression as a justification for reducing utility rates is becoming quite prevalent it does not appear that it will serve to justify or excuse a utility from going ahead with power projects according to specifications outlined in Federal licenses. Such, in short, was the holding of the Federal Power Commission in denying the petition of the Empire District Electric Power Company for authority to delay in exercising its license for a power development on the White river at Table Rock in Taney county, Missouri. The commission allowed the company until December 1, 1932, to accept the license but held that once accepted the utility must begin the development within the statutory period prescribed by the Federal Water Power Act or else the license would become void for nonuser. Commissioner McNinch, rendering the opinion of the commission, ruled that the commission was not empowered by the Federal Water Power Act to allow unusual extensions of the time within which actual exercise of privileges granted by Federal licenses must commence. The opinion in part stated:

> "The evidence clearly shows the industrial conditions existing and their potential effect upon the proposed project. Indeed, without evidence, the commission would take judicial notice of present economic conditions. On the other hand, the protestants present convincing evidence of the detrimental social and economic effects of long-continued inaction and the consequent uncertainty as to whether and when the project will be constructed, involving the flooding of approximately 28,000 acres with its consequent effects upon highways, bridges, public schools, and private property within and adjacent to the area which may be flooded.
>
> "The fact that the company has entered

into contracts with the officials of the several counties involved, under which substantial sums of money are to be paid by the company after the 'date of beginning' of the project, to reimburse for relocation and reconstruction of highways, bridges, etc., indicates the degree and kind of inconvenience being suffered by the public by reason of this uncertainty."

Re Empire District Electric Power Co.

Utility not Obliged to Bill under Cheaper of Optional Rates

PRIOR to February, 1928, the Duquesne Electric Light Company had available four rate schedules for wholesale or industrial consumers. Under one of these schedules known as "F," a commercial consumer contracted for service in five different locations. After that time, however, a new schedule "W" went into effect, designated as "optional." The particular consumer did not avail itself of the new rate but continued under "F" until October, 1929, when it found that it would have saved a considerable sum of money during the intervening months if it had elected to be served under the latter schedule. It petitioned the Pennsylvania commission for reparation of the difference between the two schedules for the period in question, but the commission decided that the "choice between two such reasonable rates may properly be left to the consumer under ordinary circumstances. While it is quite possible to make classifications of consumers unnecessarily complicated . . . the commission is not persuaded that the respondent has done so in this instance, or has established a rate which involves a discrimination between classes of its consumers." The Pennsylvania Superior Court has recently approved of the commission order in this case stating that the practice of leaving to the consumer the selection of the rate most advantageous to it is not uncommon. The court held that under the Pennsylvania Public Service Law public utilities in that state are given the right to classify their consumers, and that optional rates can, therefore, be lawfully made. The court also held that the notice of the new rate which was found to be sufficient by the public service commission was all that the company was required to give by law, and that the allegation of the consumer that no notice of the optional rate was given did not affect the question. *Spear & Co. v. Public Service Commission.*

District Commission Can Modify Sliding-scale Agreement

THE supreme court of the District of Columbia in an opinion rendered by Justice Luhring has held that the utilities commission of the District of Columbia has jurisdiction to revise the sliding scale for the adjustment of electrical rates of the Potomac Electric Power Company under a "consent decree' which was filed in 1924 providing for an automatic reduction of electrical rates each year to an amount equal to one half of its net earnings in excess of 7½ per cent upon an agreed valuation. Pursuant to this decree the company had made a reduction in rates each year with a corresponding increase in its rate of return until in 1931 the commission issued an order finding that the company had been earning about 10 per cent return in accordance with the terms of the decree. The commission ordered that the decree be modified and that a new sliding scale should be made effective. This scale provided for a fixed return of 7 per cent and a progressively greater rate reduction each